

WSR 22-07-001

PROPOSED RULES

SECRETARY OF STATE

[Filed March 2, 2022, 12:45 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-13-075.

Title of Rule and Other Identifying Information: Rules supporting the process for 17-year-old voters to participate in primaries if the voter will be 18 years of age prior to the following general election, this includes updates to notices in current rule.

Hearing Location(s): On April 26, 2022, at 2:00 p.m., at 520 Union Avenue, Olympia, 98504. The hearing will be conducted using [Microsoft] Teams. To join the hearing, call 1-206-899-2560 and enter Conference ID 328 918 204#. People will be able to hear and comment.

Date of Intended Adoption: April 27, 2022.

Submit Written Comments to: Fina Ormond, P.O. Box 40229, Olympia, WA 98504, email fina.ormond@sos.wa.gov, fax 360-664-4169.

Assistance for Persons with Disabilities: Contact Fina Ormond, phone 360-902-4146, fax 360-664-4169, email Fina.ormond@sos.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Update rules in conformance with recent legislation granting voting opportunities to persons 17 years of age in primaries if the person will reach age 18 prior to the following general election.

Reasons Supporting Proposal: Consistency in operation in all county election offices within the state: Providing guidance on the correct processes for protecting privacy, providing voting materials that limit participation to primary topics only while preventing participation in any election held on the same day, also updating processes for a variety of notices communicating eligibility to primary only voters.

Statutory Authority for Adoption: RCW 29A.04.611.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Randy Bolerjack, deputy secretary of state, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Stuart Holmes, Olympia, 360-902-4151.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

March 2, 2022
Randy Bolerjack
Deputy Secretary of State

OTS-3410.5

Chapter 434-232 WAC

SEVENTEEN YEAR OLDS PARTICIPATING IN THE PRIMARY—FUTURE VOTERS

NEW SECTION

WAC 434-232-010 Definitions. (1) "Ballot measure" for the purposes of this chapter means any question put forth for voting that involves a yes/no or approve/disapprove response. This includes, but is not limited to, any bond election; tax levy proposition; election to form, dissolve, or annex territory into a district or municipality; charter adoption, amendment, or abandonment; initiative; referendum; advisory vote; or any issue characterized by finalization of the question.

(2) "Contests prohibited to primary-only voters" means the following contests, even when held in conjunction with a primary:

(a) Any ballot measure; or

(b) Any contest where a candidate is deemed elected following the primary including, but not limited to, candidates for precinct committee officer, freeholder, charter review, and commissioners elected to a newly formed jurisdiction.

(3) "Contests subject to participation by primary-only voters" means the following contests:

(a) Nonpartisan candidate races that contain three or more candidates, appearing on a primary ballot;

(b) Partisan candidate races, regardless of the number of candidates, appearing on a primary ballot; and

(c) The presidential primary as described in chapter 29A.56 RCW regardless of the number of presidential candidates appearing on the ballot.

(4) "Primary-only voter ballots" are ballots issued to primary-only voters that contain only contests subject to participation by primary-only voters, and do not include races or contests prohibited to primary-only voters.

(5) "Primary-only voters" means a voter who is 17 years of age on the day of the primary but will reach the age of 18 on or before the date of the following November general election. Primary-only voters are only authorized to participate in primary elections and prohibited from participating in any special or general election.

(6) "Standard primary ballots" are ballots issued to all voters who are at least 18 years of age on the date of the primary that contain all applicable issues and candidate races for that ballot style.

[]

NEW SECTION

WAC 434-232-020 Primary-only voters—Future voters eligible to participate in primaries. As authorized by RCW 29A.08.170, persons signed up to register to vote as part of the future voter program are eligible to vote in state and local primaries and presidential primaries if they are 17 years of age on the day of the primary and will be

18 years of age on or before the day of the associated subsequent November general election.

[]

NEW SECTION

WAC 434-232-030 Ballots issued to primary-only voters. The county auditor may issue standard primary ballots to primary-only voters that contain all eligible races in a state, local, or presidential primary if there are no contests prohibited to primary-only voters on the ballot. When a contest prohibited to primary-only voters is held on the date of the primary as specified in RCW 29A.04.311, county election offices must issue primary-only voter ballots to primary-only voters.

[]

NEW SECTION

WAC 434-232-040 Information pertaining to primary-only voters, when disclosable. (1) Pursuant to RCW 29A.08.720, personally identifiable information from the voter registration record is exempt from public inspection and copying until the voter is 18 years of age, except for the purpose of processing and delivering ballots.

(2) Pursuant to RCW 29A.40.130, ballot issuance and return information for a primary-only voter, excluding the date of birth, gender, and address, is subject to public disclosure at the time of ballot issuance by the county auditor for a primary that the voter is eligible to participate in.

(3) Pursuant to RCW 29A.08.170, a person who signs up to register to vote must remain as a "future voter" as defined by RCW 29A.04.070 until such time as they will be eligible to vote in the next election. The voter registration information is exempt from public inspection and copying until they are 18 years of age. The ballot issuance and return information is exempt until they are eligible to participate in an election. When a person is eligible to participate in an election, the date of birth, gender, and address of the person is exempt from disclosure when providing ballot issuance and return information in accordance with RCW 29A.40.130 until they are 18 years of age.

[]

OTS-3411.2

AMENDATORY SECTION (Amending WSR 20-13-043, filed 6/10/20, effective 7/11/20)

WAC 434-324-045 Verification of applicant's identity. (1) If the applicant is provisionally registered pursuant to WAC 434-324-040(5), the county auditor may use other government resources and public records to confirm the applicant's driver's license or state identification card number, valid tribal identification card, or the last four digits of the applicant's Social Security number. The county auditor may also attempt to contact the applicant by phone, email or other means to obtain identification information.

(2) If, after these attempts, the county auditor is still unable to verify the applicant's identity, the county auditor must send the applicant an identification notice at the time of registration that includes a postage prepaid, preaddressed form by which the applicant may verify or send additional information. The identification notice must include:

(a) A statement explaining that because the applicant's identity cannot be verified with the information provided on the application, they have been provisionally registered to vote.

(b) A statement explaining that if this additional information is not provided, the applicant's ballot will not be counted.

(c) A statement explaining that federal law requires the applicant to provide their driver's license number, state identification card number, valid tribal identification card number or the last four digits of their Social Security number, or a copy of one of the following forms of identification, either before or when they vote:

(i) Valid photo identification;

(ii) A valid enrollment card of a federally recognized tribe in Washington;

(iii) A current utility bill, or a current bank statement;

(iv) A current government check;

(v) A current paycheck; or

(vi) A government document, other than a voter registration card, which shows both the registrant's name and current address.

(3) If the applicant responds with updated driver's license, state identification card, valid tribal identification card, or Social Security information, or with a copy of one of the alternative forms of identification, the flag on the voter registration record must be removed, allowing the applicant's ballot to otherwise be counted the first time they vote after registering.

(4) If the applicant fails to respond with adequate documentation to verify the applicant's identity, the applicant's voter registration record must remain flagged. The applicant must be notified at the time of each election that the ballot will not be counted unless adequate verification of identity is provided.

(5) A provisional registration must remain on the official list of registered voters for at least two general elections for federal office. If, after two general elections for federal office, the voter still has not verified or provided information to verify identity, the provisional registration shall be canceled.

(6) The county auditor shall mail an identification notice to a primary-only voter, as defined in WAC 434-232-010, no earlier than 90 days before the primary that they are eligible to participate in.

(7) The county auditor shall not mail an identification notice to a participant in the future voter program established under RCW 29A.08.170 until the participant becomes a registered voter.

[Statutory Authority: RCW 29A.04.611. WSR 20-13-043, § 434-324-045, filed 6/10/20, effective 7/11/20; WSR 14-06-040, § 434-324-045, filed 2/26/14, effective 3/29/14. Statutory Authority: RCW 29A.04.611, 29A.04.620, and 29A.04.630. WSR 11-24-064, § 434-324-045, filed 12/6/11, effective 1/6/12. Statutory Authority: RCW 29A.04.611. WSR 09-18-098, § 434-324-045, filed 9/1/09, effective 10/2/09; WSR 09-12-078, § 434-324-045, filed 5/29/09, effective 6/29/09; WSR 09-03-110, § 434-324-045, filed 1/21/09, effective 2/21/09; WSR 07-24-044, § 434-324-045, filed 11/30/07, effective 12/31/07; WSR 07-02-100, § 434-324-045, filed 1/3/07, effective 2/3/07.]

AMENDATORY SECTION (Amending WSR 20-13-043, filed 6/10/20, effective 7/11/20)

WAC 434-324-085 Acknowledgment notice. (1) The auditor must send an acknowledgment notice to an individual by nonforwardable, address correction requested mail if an individual:

- (a) Registers to vote;
- (b) Transfers their registration record within the county;
- (c) Transfers their registration record from another county within Washington state; or
- (d) Changes from one precinct to another because of a change in precinct boundaries.

(2) The acknowledgment notice must include:

- (a) Voter's full name;
- (b) Mailing address;
- (c) County name;
- (d) Precinct name and/or number; and
- (e) The date the voter registered.

(3) The county auditor shall mail an acknowledgment notice to a primary-only voter, as defined in WAC 434-232-010, no earlier than 90 days before the primary that they are eligible to participate in.

(4) The county auditor shall not mail an acknowledgment notice to a participant in the future voter program established under RCW 29A.08.170 until the participant becomes a registered voter.

[Statutory Authority: RCW 29A.04.611. WSR 20-13-043, § 434-324-085, filed 6/10/20, effective 7/11/20; WSR 09-18-098, § 434-324-085, filed 9/1/09, effective 10/2/09; WSR 07-02-100, § 434-324-085, filed 1/3/07, effective 2/3/07; WSR 06-11-041, § 434-324-085, filed 5/10/06, effective 6/10/06; WSR 05-24-039, § 434-324-085, filed 11/30/05, effective 12/31/05. Statutory Authority: RCW 29A.04.610. WSR 04-15-089, § 434-324-085, filed 7/16/04, effective 8/16/04. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. WSR 98-03-033, § 434-324-085, filed 1/13/98, effective 2/13/98; WSR 97-21-045, recodified as § 434-324-085, filed 10/13/97, effective 11/13/97; Order 74-4, § 434-24-085, filed 6/3/74.]

AMENDATORY SECTION (Amending WSR 20-13-043, filed 6/10/20, effective 7/11/20)

WAC 434-324-087 Confirmation notice. (1) When a voter is placed on inactive status, the county auditor must send a confirmation notice to the voter by first-class forwardable mail, and must include a response form that:

- (a) Is preaddressed and postage prepaid;
- (b) Includes either the voter's date of birth or voter registration number;
- (c) Asks the voter to verify their current address; and
- (d) Asks the voter to sign the oath in RCW 29A.08.230.

(2) When the voter sends the county auditor a response to the confirmation notice, the auditor must:

(a) Transfer the voter's registration and send the voter an acknowledgment notice if the response indicates that the voter has moved within the county.

(b) Forward the confirmation notice to the voter's new county by mail or electronically if the response indicates that the voter has moved to another county within Washington and the confirmation notice contains the minimum information required by WAC 434-324-036.

The county auditor in the voter's new county must register the voter using the information and signature on the confirmation notice. The new county must transfer the registration from the old county to the new county and send the voter an acknowledgment notice.

(c) Send the voter a voter registration application if the response indicates that the voter has moved to another county within Washington but the confirmation notice does not contain the minimum information required by WAC 434-324-036. The voter shall remain on inactive status according to RCW 29A.08.635.

(d) Cancel the voter's registration if the response indicates that the voter has moved out-of-state and the response is signed.

(e) Keep the voter on inactive status according to RCW 29A.08.635 if the response indicates that the voter has moved out-of-state but is not signed.

(3) The county auditor shall mail a confirmation notice to a primary-only voter, as defined in WAC 434-232-010, no earlier than 90 days before the primary that they are eligible to participate in.

(4) The county auditor shall not mail a confirmation notice to a participant in the future voter program established under RCW 29A.08.170 until the participant becomes a registered voter.

[Statutory Authority: RCW 29A.04.611. WSR 20-13-043, § 434-324-087, filed 6/10/20, effective 7/11/20; WSR 12-14-074, § 434-324-087, filed 7/2/12, effective 8/2/12.]

AMENDATORY SECTION (Amending WSR 20-13-043, filed 6/10/20, effective 7/11/20)

WAC 434-324-103 Verification notices. A verification notice must be sent when a voter registration application does not contain all the minimum information required in RCW 29A.08.010. The notice must be sent by first-class forwardable mail and must include a response form that:

(1) Is preaddressed and postage paid or is accompanied by a pre-addressed and postage paid return envelope.

(2) Requests that the applicant provide the missing information only.

(3) Requests that the applicant provide the missing information within ((forty-five)) 45 days from the date the verification notice was mailed.

If the applicant does not respond by the ((forty-five)) 45 day deadline, the voter registration application is considered void.

(4) The county auditor shall mail a verification notice to a primary-only voter, as defined in WAC 434-232-010, no earlier than 90 days before the primary that they are eligible to participate in.

(5) The county auditor shall not mail a verification notice to a participant in the future voter program established under RCW 29A.08.170 until the participant becomes a registered voter.

[Statutory Authority: RCW 29A.04.611. WSR 20-13-043, § 434-324-103, filed 6/10/20, effective 7/11/20. Statutory Authority: RCW 29A.04.611 and 29A.04.620. WSR 16-13-063, § 434-324-103, filed 6/13/16, effective 7/14/16.]

WSR 22-07-024

PROPOSED RULES

DEPARTMENT OF HEALTH

[Filed March 9, 2022, 2:11 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-12-040.

Title of Rule and Other Identifying Information: Chapter 246-928 WAC, Respiratory care practitioners. The department of health (department) is proposing amending, repealing, and creating new rule sections to implement and align with SHB 1383 (chapter 114, Laws of 2021), which made changes to the profession including, but not limited to, the scope of practice, required qualifications, and training necessary for particular procedures. Additionally, the department is proposing changes to update, clarify, and streamline the chapter.

Hearing Location(s): On April 27, 2022, at 9:00 a.m. In response to the coronavirus disease 2019 (COVID-19), the department will not provide a physical location for this hearing to promote social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held instead. Register in advance for this webinar https://us02web.zoom.us/webinar/register/WN_YacpcBumQBOASp2_aeXjwg. After registering, you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: May 4, 2022.

Submit Written Comments to: Ted Dale, Office of Health Professions, P.O. Box 47852, Olympia, WA 98504-7852, email <https://fortress.wa.gov/doh/policyreview>, ted.dale@doh.wa.gov, by April 27, 2022.

Assistance for Persons with Disabilities: Contact Ted Dale, phone 360-236-2991, TTY 711, email ted.dale@doh.wa.gov, by April 20, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Proposed amendments to chapter 246-928 WAC implement statutory changes made necessary under SHB 1383, which significantly expanded the scope of the respiratory care practitioner profession as well as made other changes. SHB 1383 adds disease prevention to respiratory care practitioners' scope of practice, as well as authorization to perform extracorporeal membrane oxygenation, perform cardiopulmonary stress testing, and administer nitrous oxide for analgesia. Proposed amendments set standards for the increased scope of practice and defining training requirements as authorized by SHB 1383. In addition to making scope of practice changes, the proposed amendments include: (1) Expanding the list of organizations whose trainings are accepted as continuing education; (2) raising minimum education requirements; (3) raising examination requirements; (4) repealing a rule allowing new graduates to practice prior to licensure; (5) creating rules regulating training related to specific medical procedures; and (6) making other changes to update, clarify, and streamline the chapter. These amendments align the chapter [with] the statute, raising the qualifications of respiratory care practitioners in Washington and raising the standard of care that they will be able to provide their patients.

Reasons Supporting Proposal: SHB 1383 modified the respiratory care practitioner profession, including the scope of practice, education requirements, and examination requirements. These amendments are necessary to implement the bill and align the rules with statutory changes. Additionally, creating enforceable standards through rule

will allow the department to consistently monitor and enforce rules that protect patient safety.

Statutory Authority for Adoption: RCW 18.89.050.

Statute Being Implemented: SHB 1383 (chapter 114, Laws of 2021).

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Ted Dale, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-2991.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Ted Dale, Office of Health Professions, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-2991, TTY 711, email ted.dale@doh.wa.gov.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rule content is explicitly and specifically dictated by statute.

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The proposed amendments impact rules regulating individual professional licenses, not businesses.

March 7, 2022
Kristin Peterson, JD
Deputy Secretary
Policy and Planning
for Umair A. Shah, MD, MPH
Secretary

OTS-3610.2

AMENDATORY SECTION (Amending WSR 01-11-165, filed 5/23/01, effective 6/23/01)

WAC 246-928-320 General definitions. ((This section defines terms used in the rules contained in this chapter.))

((1) "Respiratory care practitioner" means a person licensed by the department of health, who is authorized under chapter 18.89 RCW and these rules to practice respiratory therapy. WAC 246-928-410 explains who must be licensed as a respiratory care practitioner.)) The

definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Analgesia" means providing pain relief or loss of physical sensation without the total loss of consciousness or physical movement, and which allows the patient to respond to verbal commands and tactile stimulation.

(2) "Applicant" means a person whose application for licensure as a respiratory care practitioner is being submitted to the department ((of health)).

(3) "Department" means the Washington state department of health.

(4) "Respiratory care practitioner" means a person licensed by the department, who is authorized under chapter 18.89 RCW and these rules to practice respiratory therapy. WAC 246-928-410 explains who must be licensed as a respiratory care practitioner.

[Statutory Authority: RCW 18.89.050(1). WSR 01-11-165, § 246-928-320, filed 5/23/01, effective 6/23/01.]

((PART I

~~DEFINITIONS AND PROCEDURES FOR LICENSING AS A RESPIRATORY CARE PRACTITIONER~~)

AMENDATORY SECTION (Amending WSR 01-11-165, filed 5/23/01, effective 6/23/01)

~~WAC 246-928-410 ((Who must be licensed as)) Licensure requirements for a respiratory care practitioner ((with the department)).~~

This section identifies who must be licensed as a respiratory care practitioner with the department and who is exempt from licensure.

(1) Any person performing or offering to perform the functions authorized in RCW 18.89.040 must be licensed as a respiratory care practitioner. A certification, registration or other credential issued by a professional organization does not substitute for licensure as a respiratory care practitioner in Washington state.

(2) The following individuals are exempt from licensure as a respiratory care practitioner ((with the department)):

(a) Any person performing or offering to perform the functions authorized in RCW 18.89.040, ((if that person already holds a current licensure, certification or registration that authorizes these functions)) who is either registered, certified, licensed, or similarly regulated under the laws of this state and is performing services within the person's authorized scope of practice;

(b) Any person employed by the United States government who is practicing respiratory care as a performance of the duties prescribed for him or her by the laws of and rules of the United States;

(c) Any person who is pursuing a supervised course of study leading to a degree or certificate in respiratory care, if the person is designated by a title that clearly indicates ((his or her)) their sta-

tus as a student or trainee and limited to the extent of demonstrated proficiency of completed curriculum, and under direct supervision;

(d) Any person who is licensed as a registered nurse under chapter 18.79 RCW;

(e) Any person who is practicing respiratory care without compensation for a family member.

[Statutory Authority: RCW 18.89.050(1). WSR 01-11-165, § 246-928-410, filed 5/23/01, effective 6/23/01.]

AMENDATORY SECTION (Amending WSR 01-11-165, filed 5/23/01, effective 6/23/01)

WAC 246-928-420 ((How to become licensed as a)) Respiratory care practitioner application requirements. ((This section explains how a person may become licensed as a respiratory care practitioner with the department.

(1) The department shall provide forms for use by an applicant for licensure as a respiratory care practitioner. All applications for licensure must be submitted on these forms, with the appropriate fee required in WAC 246-928-990. The specific requirements and process for licensure is set forth in WAC 246-12-020.

(2) The applicant shall certify that all information on the application forms is accurate. The applicant is subject to investigation and discipline by the department for any apparent violation of chapters 18.130 and 18.89 RCW, or this chapter.) To become licensed as a respiratory care practitioner, an applicant shall:

(1) Submit to the department:

(a) A completed application as provided by the department;

(b) Proof of meeting the education requirements in WAC

246-928-520;

(c) The appropriate fee required in WAC 246-928-990; and

(d) Any other information determined necessary by the department;

and

(2) Comply with the examination requirements in WAC 246-928-540.

[Statutory Authority: RCW 18.89.050(1). WSR 01-11-165, § 246-928-420, filed 5/23/01, effective 6/23/01.]

AMENDATORY SECTION (Amending WSR 01-11-165, filed 5/23/01, effective 6/23/01)

WAC 246-928-430 ((How and when to renew a)) Respiratory care practitioner license renewal. ((This section explains how and when to renew a respiratory care practitioner license.))

(1) ((Applications for renewal of the license for)) To renew a license a respiratory care practitioner shall ((be submitted on forms)) submit a renewal form provided by the department, with the appropriate fee required in WAC 246-928-990.

(2) The specific requirements and process for renewal of a license are ((set forth)) in WAC 246-12-030.

((+2)) (3) Renewal fees must be postmarked on or before the renewal date or the department will charge a late renewal penalty fee and licensure reissuance fee.

[Statutory Authority: RCW 18.89.050(1). WSR 01-11-165, § 246-928-430, filed 5/23/01, effective 6/23/01.]

AMENDATORY SECTION (Amending WSR 15-24-095, filed 11/30/15, effective 12/31/15)

WAC 246-928-442 Continuing education. ((All licensed)) To renew a respiratory care practitioner ((s seeking to renew their)) license, the licensee shall acquire ((thirty)) 30 credit hours of continuing respiratory care education every two years as required in RCW 18.89.140. Licensees shall meet the continuing education requirement outlined in this section and report such continuing education as required in ((chapter 246-12 WAC, Part 7)) WAC 246-12-170 through 246-12-240.

(1) The following are categories of ((acceptable)) accepted continuing education activities for licensed respiratory care practitioners:

(a) A minimum of ((ten)) 10 credit hours of continuing education during each two-year reporting cycle must be earned in courses approved by the American Association for Respiratory Care (AARC).

(b) The remaining ((twenty)) 20 hours of continuing education during each two-year reporting cycle may be in any of the following areas:

(i) Sponsored courses. Courses sponsored or approved by the:

- (A) American Academy of Pediatrics;
- (B) American Academy of Physician Assistants;
- (C) American Association of Critical Care Nurses;
- (D) American Association of Respiratory Care;
- (E) American College of Chest Physicians;
- (F) American College of Emergency Physicians;
- (G) American College of Physicians;
- (H) American Medical Association;
- (I) American Nurses Association;
- (J) American Osteopathic Association;
- (K) American Thoracic Society;
- (L) Society of Critical Care Medicine;
- (M) Washington academy of physician assistants;
- (N) Washington osteopathic medicine association;
- (O) Washington state medical association; ((or))
- (P) Washington state nurses association;
- (Q) Extracorporeal life support organization; or
- (R) American Society of Extracorporeal Technology.

(ii) Certifications/examinations ((. Licensees shall only claim credit hours in this category that were obtained during the current reporting cycle)) valid for continuing education credit.

(A) Ten credit hours each may be claimed for the following initial or renewal certifications:

- (I) Advanced cardiac life support (also known as ACLS);
- (II) Neonatal advanced life support (also known as NALS, or neonatal resuscitation program or NRP);
- (III) Pediatric advanced life support (also known as PALS).

(B) Five credit hours may be claimed for initial or renewal certification in basic life support (also known as BLS).

(C) Ten credit hours each may be claimed for passing either of the following National Board of Respiratory Care (NBRC) advanced practitioner examinations:

(I) The NBRC therapist multiple-choice examination combined with the clinical simulation examination that awards NBRC registration ((formerly known as the registered respiratory therapist, or "RRT," examination)); or

(II) Registered pulmonary function technologist.

(D) Five credit hours each may be claimed for passing any of the following:

(I) The NBRC therapist multiple-choice examination that awards NBRC certification ((formerly known as the entry level, or "CRT," examination));

(II) Any NBRC specialty examination;

(III) The NBRC self-assessment competency examination with a minimum score of ((seventy-five)) 75; or

(IV) National Asthma Educator Certification Board certified asthma educator examination.

(iii) Educational settings.

(A) A licensee may claim courses completed at a regionally accredited college, university, or institute of higher education. Such courses must focus on the clinical practice of respiratory care or education related to the cardiopulmonary system. Credit hours for such courses may be claimed as either:

(I) Actual semester contact hours (such as ((fifteen)) 15 semester contact hours shall be equal to ((fifteen)) 15 continuing education credits); or

(II) An academic credit formula that multiplies the academic credits by a factor of three (such as four academic credits shall be equal to ((twelve)) 12 continuing education credits).

(B) A licensee may claim respiratory care educational offerings provided by hospitals or health organizations.

(C) A licensee may claim continuing education credit hours for serving as an instructor of educational offerings in respiratory care provided by hospitals or health organizations; or at a regionally accredited college, university, or institute of higher education. Such educational offerings must include learning objectives. The number of credit hours claimed for serving as an instructor shall be the same number as those earned by attendees. The credit hours for presenting a specific topic, lecture, or education course may only be used for continuing education once during each reporting cycle.

(c) No more than ((ten)) 10 credit hours of continuing education during a two-year reporting cycle may be in any of the following areas:

(i) Self-study. Journal reading of publications related to respiratory care;

(ii) Practice related topics. Formal, internet-based, or video-format courses offered by organizations not listed in (b) of this subsection including, but not limited to, the American Association of Cardiovascular and Pulmonary Rehabilitation, the Association for the Treatment of Tobacco Use and Dependence, or the Council for Tobacco Treatment Training Programs; or

(iii) Nonclinical practice topics. Courses or activities including, but not limited to, health promotion, health care cost manage-

ment, mandatory reporting, professional ethics, and regulatory affairs.

(2) Documentation. ((Licensees are)) A licensee is responsible for acquiring and maintaining all acceptable documentation of their continuing education activities, as required in ((chapter 246-12 WAC, Part 7)) WAC 246-12-170 through 246-12-240. Acceptable documentation ((shall)) must include transcripts, letters from course instructors, or certificates of completion or other formal certifications provided by hospitals, course instructors, and health organizations. In all cases other than transcripts, the documentation must show the participant's name, activity title, number of continuing education credit hours, date(s) of activity, instructor's name(s) and degree and the signature of the verifying individual program sponsor.

[Statutory Authority: RCW 18.89.050 and 19.89.140 [18.89.140]. WSR 15-24-095, § 246-928-442, filed 11/30/15, effective 12/31/15. Statutory Authority: RCW 18.89.050(1) and 18.89.140. WSR 01-21-136, § 246-928-442, filed 10/24/01, effective 11/24/01.]

AMENDATORY SECTION (Amending WSR 01-21-136, filed 10/24/01, effective 11/24/01)

WAC 246-928-443 Verification of continuing education. (1) The licensee shall:

(a) Verify on renewal forms provided by the department, that the minimum continuing education has been completed within the two-year renewal cycle prior to the licensee's renewal date; and

(b) Keep records for four years as required in ((chapter 246-12 WAC, Part 7)) WAC 246-12-200.

(2) ((Audits.)) The department may conduct random compliance audits of continuing education records ((, as described in chapter 246-12 WAC, Part 7)) in compliance with WAC 246-12-170 through 246-12-240.

(3) ((Exemptions.)) In certain emergency situations, the department may excuse all or part of the continuing education requirement ((as described in chapter 246-12 WAC, Part 7)) in compliance with WAC 246-12-210. The department may require verification of the emergency.

[Statutory Authority: RCW 18.89.050(1) and 18.89.140. WSR 01-21-136, § 246-928-443, filed 10/24/01, effective 11/24/01.]

AMENDATORY SECTION (Amending WSR 01-11-165, filed 5/23/01, effective 6/23/01)

WAC 246-928-450 ((How to reinstate an)) Expired respiratory care practitioner license. ((This section explains the process for reinstatement of an expired respiratory care practitioner license. Applications for reinstatement of an expired license may be submitted on forms provided by the department, with the appropriate fee required in WAC 246-928-990. The specific requirements and process for reinstatement of an expired license is set forth in)) To return an expired license to active status, the applicant shall meet the requirements in WAC 246-12-040.

[Statutory Authority: RCW 18.89.050(1). WSR 01-11-165, § 246-928-450, filed 5/23/01, effective 6/23/01.]

((PART II

~~REQUIREMENTS FOR LICENSURE AS A RESPIRATORY CARE PRACTITIONER~~))

AMENDATORY SECTION (Amending WSR 01-11-165, filed 5/23/01, effective 6/23/01)

WAC 246-928-520 Minimum educational qualifications for licensure as a respiratory care practitioner. ((This section provides the minimum educational qualifications for licensure as a respiratory care practitioner.))

(1) To meet the educational requirements required by RCW 18.89.090, an applicant must be a graduate of at least a two-year respiratory therapy educational program. ((Programs)) The program must be accredited by:

((Accredited by)) (a) The Committee on Accreditation for Respiratory Care ((COARC) or accredited by) (CoARC);
(b) The American Medical Association's (AMA) Committee on Allied Health Education and Accreditation (CAHEA) ((, or its successor,)); or
(c) The Commission on Accreditation of Allied Health Education Program (CAAHEP).

(2) An official transcript indicating completion of at least a two-year program must be provided as evidence of fulfillment of the required education.

[Statutory Authority: RCW 18.89.050(1). WSR 01-11-165, § 246-928-520, filed 5/23/01, effective 6/23/01.]

AMENDATORY SECTION (Amending WSR 01-11-165, filed 5/23/01, effective 6/23/01)

WAC 246-928-540 Examination requirements for licensure as a respiratory care practitioner. ((This section provides the minimum examination requirements for licensure as a respiratory care practitioner.))

(1) An applicant who has taken and passed both the therapist multiple choice examination and the clinical simulation examination for the registered respiratory therapist credential provided by the National Board for Respiratory Care (NBRC) ((entry level examination)), has met the minimum examination requirements of RCW 18.89.090 (1)(b). Applicants shall request the NBRC ((to)) verify to the department that the applicant has successfully passed the NBRC examinations.

(2) An active registered respiratory therapist credential with NBRC is considered proof of meeting the minimum examination requirements.

[Statutory Authority: RCW 18.89.050(1). WSR 01-11-165, § 246-928-540, filed 5/23/01, effective 6/23/01.]

AMENDATORY SECTION (Amending WSR 01-11-165, filed 5/23/01, effective 6/23/01)

WAC 246-928-560 ((How to apply for)) Licensure for persons credentialed out-of-state. ((This section explains how a person holding a license in another state or jurisdiction may apply for licensure.

((1))) An applicant who is currently or was previously credentialed in another state or jurisdiction may qualify for licensure in Washington state. ((Applicants must submit the following documentation)) To be considered for licensure:

(1) The applicant shall submit to the department:

(a) ((An)) A completed application on forms provided by the department;

((b) Proof of meeting the education requirements in WAC 246-928-520 or subsection (4) of this section; and

((c) A fee ((and forms)) as specified in WAC ((246-928-420 and)) 246-928-990 ((; and

((b) Written)).

(2) The applicant shall comply with the examination requirements in WAC 246-928-540 or subsection (4) of this section.

(3) The applicant shall request written verification directly from all states in which the applicant is or was credentialed, attesting that the applicant has or had a license in good standing and is not subject to charges or disciplinary action for unprofessional conduct or impairment((; and

((e) Verification of completion of the required education and examination as specified in WAC 246-928-520)).

((2))) (4) Applicants who have completed at least a two-year program recognized by the Canadian Society of Respiratory Therapists (CSRT) in their current list, or any previous lists, and ((are eligible to sit for)) have passed the CSRT registry examination; or have been issued a registration by the CSRT are considered to have met the educational and examination requirements in this chapter. Canadian applicants are required to submit verification directly from CSRT, as well as all of the information listed above for applicants licensed in another jurisdiction.

[Statutory Authority: RCW 18.89.050(1). WSR 01-11-165, § 246-928-560, filed 5/23/01, effective 6/23/01.]

AMENDATORY SECTION (Amending WSR 01-11-165, filed 5/23/01, effective 6/23/01)

WAC 246-928-570 ((How to apply for)) Temporary practice permits for ((persons)) applicants credentialed out-of-state. ((This section

~~explains how a person holding a license in another state or jurisdiction may apply for a temporary practice permit.)~~

(1) An applicant who is currently or was previously credentialed in another state or jurisdiction may qualify for licensure in Washington state. Applicants must submit the following documentation to be considered for a temporary practice permit:

(a) A completed application on forms provided by the department with the request for a temporary practice permit indicated;

(b) An application fee and a temporary practice permit fee as specified in WAC 246-928-990;

(c) Written verification directly from all states or jurisdictions in which the applicant is or was licensed, attesting that the applicant has or had a license in good standing and is not subject to charges or disciplinary action for unprofessional conduct or impairment; and

(d) Verification of completion of the required education and examination as specified in WAC 246-928-520.

(2) The department shall issue a one-time-only temporary practice permit unless the department determines a basis for denial of the license or issuance of a conditional license.

(3) The temporary permit shall expire upon the issuance of a license by the department, or within ~~((three months))~~ 90 days, whichever occurs first. The permit shall not be extended beyond the expiration date.

(4) Issuance of a temporary practice permit does not ensure that the department will grant a full license. Temporary permit holders are subject to the same education and examination requirements as set forth in WAC 246-928-520 and 246-928-550.

(5) The following situations are not considered substantially equal for Washington state licensure:

(a) Certification of persons credentialed out-of-state through a state-constructed examination; or

(b) ~~((Grandfathering))~~ Legacy provisions where proof of education and examination was not required.

[Statutory Authority: RCW 18.89.050(1). WSR 01-11-165, § 246-928-570, filed 5/23/01, effective 6/23/01.]

NEW SECTION

WAC 246-928-580 Education and training requirements for extracorporeal membrane oxygenation (ECMO) and extracorporeal life support (ECLS). (1) In order to provide extracorporeal membrane oxygenation (ECMO) and extracorporeal life support (ECLS), a respiratory care practitioner shall first complete education and hands-on experience specific to this treatment. The education must meet the guidelines in the 2010 Extracorporeal Life Support Organization (ELSO) Guidelines for Training and Continuing Education of ECMO Specialists and must include:

(a) Didactic sessions of at least 24 hours;

(b) Hands-on proficiencies, also known as water drills, including:

(i) Basic session with a discussion and demonstration of the equipment; and

(ii) Emergency session to address failure of the equipment and corrections;

(c) High-fidelity simulation or animal sessions; and

(d) Preceptor training, also known as bedside training, of at least 16 hours.

(2) An ECMO or ECLS training program which meets the standards set by ELSO meets the training requirements of this section. This includes, but is not limited to, institutes and facilities that employ respiratory care practitioners.

(3) A respiratory care practitioner who provides ECMO or ECLS shall meet any annual training and certification requirements of their institute or facility, which may include, but are not limited to, examinations, evaluations, or continuing education requirements.

[]

NEW SECTION

WAC 246-928-590 Training requirements for the administration of nitrous oxide. (1) A respiratory care practitioner shall follow the training requirements and protocols of the hospital or facility in which they are employed when providing nitrous oxide for analgesia.

(2) To provide nitrous oxide for analgesia, a respiratory care practitioner shall complete training that includes, but is not limited to, the following components:

(a) Nitrous oxide training which provides education specific to administering nitrous oxide for analgesia;

(b) In-service competency which includes hands-on proficiency in the administration of nitrous oxide for analgesia; and

(c) Observed competency requirement of at least one successful, independent administration of nitrous oxide observed by a licensed individual currently qualified to provide this treatment.

(3) Respiratory care practitioners may only administer nitrous oxide for analgesia under direct supervision of a health care practitioner as defined in RCW 18.89.020 who is on-site and physically present in the treatment operatory.

[]

((PART III
~~REQUIREMENTS FOR REPORTING UNPROFESSIONAL CONDUCT~~))

AMENDATORY SECTION (Amending WSR 01-11-165, filed 5/23/01, effective 6/23/01)

WAC 246-928-710 Mandatory reporting. ((1) All reports required by this chapter shall be submitted to the department as soon as possible, but no later than twenty days after a determination is made. (2) A report should contain the following information if known: (a) The name, address, and telephone number of the person making the report. (b) The name, address, and telephone numbers of the respiratory care practitioner being reported. (c) The case number of any patient whose treatment is a subject of the report. (d) A brief description or summary of the facts which prompted the issuance of the report, including dates of occurrences. (e) If court action is involved, the name of the court in which the action is filed along with the date of filing and docket number. (f) Any further information which would aid in the evaluation of the report. (3) Mandatory reports shall be exempt from public inspection and copying to the extent permitted under RCW 42.17.310 or to the extent that public inspection or copying of the report or any portion of the report would invade or violate a person's right to privacy as set forth in RCW 42.17.255. (4) A person is immune from civil liability, whether direct or derivative, for providing information to the department pursuant to RCW 18.130.070.) Individuals and other entities must report unprofessional conduct in compliance with the Uniform Disciplinary Act in chapter 18.130 RCW and the standards of professional conduct in chapter 246-16 WAC.

[Statutory Authority: RCW 18.89.050(1). WSR 01-11-165, § 246-928-710, filed 5/23/01, effective 6/23/01.]

((PART IV
RESPIRATORY CARE PRACTITIONER LICENSING AND RENEWAL FEES))

AMENDATORY SECTION (Amending WSR 15-19-149, filed 9/22/15, effective 1/1/16)

WAC 246-928-990 Respiratory care fees and renewal cycle. (1) Licenses must be renewed every two years on the practitioner's birthday as provided in ((chapter 246-12 WAC, Part 2)) WAC 246-12-030. (2) The following nonrefundable fees will be charged:

Title of Fee	Fee
Application	\$140.00
Temporary practice permit	50.00

Title of Fee	Fee
Duplicate license	15.00
Verification of licensure	15.00
Renewal	110.00
Late renewal penalty	55.00
Expired license reissuance	65.00

[Statutory Authority: 43.70.280. WSR 15-19-149, § 246-928-990, filed 9/22/15, effective 1/1/16. Statutory Authority: RCW 43.70.110, 43.70.250, and 2010 c 37. WSR 10-19-071, § 246-928-990, filed 9/16/10, effective 10/15/10. Statutory Authority: RCW 43.70.110, 43.70.250 and 2008 c 329. WSR 08-16-008, § 246-928-990, filed 7/24/08, effective 7/25/08. Statutory Authority: RCW 43.70.250, [43.70.]280 and 43.70.110. WSR 05-12-012, § 246-928-990, filed 5/20/05, effective 7/1/05. Statutory Authority: RCW 18.89.050(1). WSR 01-11-165, § 246-928-990, filed 5/23/01, effective 6/23/01. Statutory Authority: RCW 43.70.250. WSR 99-08-101, § 246-928-990, filed 4/6/99, effective 7/1/99. Statutory Authority: RCW 43.70.280. WSR 98-05-060, § 246-928-990, filed 2/13/98, effective 3/16/98. Statutory Authority: Chapter 18.89 RCW and RCW 43.70.040. WSR 95-18-019, § 246-928-990, filed 8/24/95, effective 9/24/95. Statutory Authority: RCW 43.70.250. WSR 92-15-032 (Order 285), § 246-928-990, filed 7/7/92, effective 8/7/92. Statutory Authority: RCW 18.89.050 and 43.70.250. WSR 92-02-018 (Order 224), § 246-928-990, filed 12/23/91, effective 1/23/92. Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-928-990, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 43.24.086. WSR 88-17-099 (Order PM 741), § 308-195-110, filed 8/23/88.]

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 246-928-310	Introduction.
WAC 246-928-440	Continuing education requirements.
WAC 246-928-510	Overview of the qualifications required for licensure as a respiratory care practitioner.
WAC 246-928-530	How new graduates may qualify for temporary practice and what is required.
WAC 246-928-720	Health care institutions.
WAC 246-928-730	Respiratory care practitioner associations or societies.
WAC 246-928-740	Professional liability carriers.
WAC 246-928-750	Courts.
WAC 246-928-760	State and federal agencies.

WSR 22-07-026

PROPOSED RULES

DEPARTMENT OF HEALTH

[Filed March 10, 2022, 9:55 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-04-048.

Title of Rule and Other Identifying Information: Chapter 246-834 WAC, Midwifery. The department of health (department) is proposing rules to update the midwifery chapter in WAC 246-834-050 Examination requirements for licensure as a midwife, 246-834-060 Initial application requirements for licensure as a midwife, 246-834-160 Student midwife permit, 246-834-250 Legend drugs and devices, and 246-834-370 Data submission. Proposed language will modernize licensure requirements, update the legend drugs and devices section, and clarify renewal requirements.

Hearing Location(s): On April 28, 2022, at 9:30 a.m. In response to the coronavirus disease 2019 (COVID-19), the department will not provide a physical location for this hearing to promote social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held instead. Register in advance for this webinar https://us02web.zoom.us/webinar/register/WN_J7A98s-0ROyfSNRkbQS3lw. After registering, you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: May 5, 2022.

Submit Written Comments to: Kathy Weed, P.O. Box 47852, Olympia, WA 98504, email <https://fortress.wa.gov/doh/policyreview>, fax 360-236-2901, by April 28, 2022.

Assistance for Persons with Disabilities: Contact Kathy Weed, phone 360-236-4883, fax 360-236-2901, TTY 711, email kathy.weed@doh.wa.gov, by April 20, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules update requirements for initial application, legend drugs and devices, and data submission. Proposed language will modernize the initial applications section by clarifying that the department may waive exam requirements through rule making, remove the specific HIV/AIDS training requirement per statute, update the legend drugs and devices section to include nasal swabs for testing, the use of limited ultrasounds, and intravenous tranexamic to increase patient safety, and amend language for data submission renewal requirements.

Reasons Supporting Proposal: Applicants must take and pass three examinations to become a licensed midwife. The department is proposing language to clarify that the department may remove an exam requirement, through rule making, if one of the exams is not being widely administered.

ESHB 1551, chapter 76, Laws of 2020, removes the requirement for HIV/AIDS education and training. The proposed rules eliminate this specific requirement from rule.

The list of legend devices does not currently include nasopharyngeal or nasal swabs, so midwives may not use them. The department is proposing adding nasal swabs to the legend drugs and devices section. Having this spelled out in rule allows midwives to perform the procedure during times of critical health care needs such as the COVID-19 response, as well as helping their patients get timely care. Additionally, the department is proposing language for specific uses of ultra-

sounds including confirmation of viability, first trimester dating, third trimester presentation, placental location, and amniotic fluid assessment. Giving midwives the ability to determine fetal health and well-being through limited ultrasounds allows for continuity of care and provides for more timely care instead of finding another provider to perform the assessment. Finally, the antihemorrhagic drug, intravenous tranexamic, was suggested as an addition by the Washington medical commission because it is becoming the standard of care for post-partum hemorrhage. Adding legend drugs and devices in rule does not equate to a scope expansion. Midwives receive education, training, and experience in programs and continuing education that follow guidelines established by the International Confederation of Midwives, the North American Registry of Midwives, and the Midwifery Education and Accreditation Council. These organizations ensure quality, comprehensive, and evolving competencies so that licensed midwives have essential knowledge and skills for their clients.

One of the current provisions for midwife renewal is proof of participation in data submission on perinatal outcomes to a national or state research organization. The main database for midwives is not being funded and access to the system is inconsistent. As a result, some licensed midwives cannot participate in data submission. The department is proposing adding a waiver to this requirement, for good cause, until a suitable database is created.

Statutory Authority for Adoption: RCW 18.50.135, 18.50.115, and 18.50.060.

Statute Being Implemented: RCW 18.50.135, 18.50.115, and 18.50.060.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: The department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Kathy Weed, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4883.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Kathy Weed, P.O. Box 47852, Olympia, WA 98504, phone 360-236-4883, fax 360-236-2901, TTY 711, email kathy.weed@doh.wa.gov.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rule content is explicitly and specifically dictated by statute.

Explanation of exemptions: WAC 246-834-060 is exempt under RCW 34.05.310 (4)(e) because the proposed rule includes content which is explicitly and specifically dictated by statute. It also is exempt under RCW 34.05.310 (4)(d) because the proposed amendments also provide clarification without changing the effect. WAC 246-834-160 is exempt under RCW 34.05.310 (4)(d) because the proposed rule amendments make clarifying changes without changing the effect.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. With the exception of WAC 246-834-060 and 246-834-160, which are exempt from analysis, the remaining sections of

rule were analyzed. The analysis determined that the proposed rule[s] do not impact businesses, only providers.

March 9, 2022
Kristin Peterson, JD
Deputy Secretary
Policy and Planning
for Umair A. Shah, MD, MPH
Secretary

OTS-3549.3

AMENDATORY SECTION (Amending WSR 17-15-024, filed 7/7/17, effective 8/7/17)

WAC 246-834-050 Examination requirements for licensure as a midwife. (1) An applicant for midwifery licensure shall successfully pass:

- ((1)) (a) The midwifery examination offered by the North American Registry of Midwives (NARM);
- ((2)) (b) The Washington state licensure examination with a minimum passing score of ((eighty)) 80; and
- ((3)) (c) The midwifery jurisprudence examination with a passing score of ((one hundred)) 100 percent, as offered by the department.

(2) The secretary may, by rule, revise examination requirements if necessary, for good cause.

[Statutory Authority: RCW 18.50.010, 18.50.040, 18.50.050, 18.50.135, and 2014 c 187. WSR 17-15-024, § 246-834-050, filed 7/7/17, effective 8/7/17. Statutory Authority: RCW 18.50.060. WSR 99-03-064, § 246-834-050, filed 1/18/99, effective 2/18/99.]

AMENDATORY SECTION (Amending WSR 19-15-005, filed 7/5/19, effective 8/5/19)

WAC 246-834-060 Initial application requirements for licensure as a midwife. (1) An applicant for a midwife license shall submit to the department the following:

- (a) Initial application on forms provided by the department.
- (b) Fees required in WAC 246-834-990.
- (c) Proof of high school graduation, or its equivalent.
- (d) Proof of at least three years of midwifery training, per RCW 18.50.040 (2)(a), unless the applicant qualifies for a reduced academic period.
- (e) ~~((Proof of completion of seven clock hours of HIV/AIDS education as required in chapter 246-12 WAC, Part 8.~~
- ~~((f)) Proof of successful completion of the midwifery jurisprudence exam, as ((offered by the department)) required in WAC 246-834-050.~~

(2) In addition to the requirements in subsection (1) of this section, an applicant for a midwife license shall also:

(a) Have transcripts sent directly to the department from the applicant's midwifery school demonstrating that the applicant has received a certificate or diploma in midwifery. An applicant applying under WAC 246-834-065 or 246-834-066 may be exempted from this requirement.

(b) Have verification of passing the North American Registry of Midwives (NARM) examination as required in WAC 246-834-050. Results must be sent directly to the department from NARM.

(3) Once all application requirements in this section are met, and additional requirements in WAC 246-834-065 or 246-834-066 if applicable, the department will schedule the applicant for the Washington state ~~((specific component))~~ licensing exam as required in WAC 246-834-050.

[Statutory Authority: RCW 18.50.135 and 18.50.115. WSR 19-15-005, § 246-834-060, filed 7/5/19, effective 8/5/19. Statutory Authority: RCW 18.50.065, 18.50.135, and 18.50.040. WSR 15-20-049, § 246-834-060, filed 9/30/15, effective 10/31/15. Statutory Authority: RCW 18.50.060. WSR 99-03-064, § 246-834-060, filed 1/18/99, effective 2/18/99. Statutory Authority: RCW 43.70.280. WSR 98-05-060, § 246-834-060, filed 2/13/98, effective 3/16/98. Statutory Authority: RCW 18.50.135 and 18.50.045. WSR 92-02-018 (Order 224), § 246-834-060, filed 12/23/91, effective 1/23/92. Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-834-060, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 18.50.135. WSR 82-19-079 (Order PL 406), § 308-115-060, filed 9/21/82.]

AMENDATORY SECTION (Amending WSR 17-15-024, filed 7/7/17, effective 8/7/17)

WAC 246-834-160 Student midwife permit. (1) A student midwife permit may be issued to any individual who has:

(a) Successfully completed an accredited midwifery program as specified in WAC 246-834-135, or is foreign trained as specified in WAC 246-834-065(1);

(b) Obtained a minimum period of midwifery training of at least three academic years as required by WAC 246-834-140;

(c) Met the minimum education requirements required in WAC 246-834-140 (2)(a) and (b);

(d) Documentation of undertaking the care of not less than ~~((fifty))~~ 50 women in each of the prenatal, intrapartum and early postpartum periods as required by RCW 18.50.040 (2)(c);

(e) Satisfactorily completed the NARM examination required by WAC 246-834-050; and

(f) Filed a completed application for student midwife permit under WAC 246-834-060 and accompanied by a nonrefundable fee as specified in WAC 246-834-990.

(2) The student midwife permit authorizes the individuals to practice and observe women in the intrapartum period under the supervision of a licensed midwife under 18.50 RCW, an allopathic physician under chapter 18.71 RCW, an osteopathic physician under chapter 18.57 RCW or certified nurse midwife under chapter 18.79 RCW.

(3) Once all application requirements including clinical components are completed the applicant may be eligible to sit for the Washington state licensure examination as required in WAC 246-834-050.

[Statutory Authority: RCW 18.50.010, 18.50.040, 18.50.050, 18.50.135, and 2014 c 187. WSR 17-15-024, § 246-834-160, filed 7/7/17, effective 8/7/17. Statutory Authority: RCW 18.50.135 and 18.50.045. WSR 92-02-018 (Order 224), § 246-834-160, filed 12/23/91, effective 1/23/92. Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-834-160, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 18.50.135. WSR 82-19-079 (Order PL 406), § 308-115-160, filed 9/21/82.]

AMENDATORY SECTION (Amending WSR 19-15-005, filed 7/5/19, effective 8/5/19)

WAC 246-834-250 Legend drugs and devices. A licensed midwife shall have a procedure, policy or guideline for the use of each legend drug and device. A midwife may not administer a legend drug or use a legend device for which they are not qualified by education, training, and experience.

(1) A licensed ((midwives)) midwife may purchase and use legend drugs and devices as follows:

(a) Dopplers, syringes, needles, phlebotomy equipment, sutures, urinary catheters, intravenous equipment, amnihooks, airway suction devices, electronic fetal monitors, tocodynamometer monitors, oxygen and associated equipment, glucose monitoring systems and testing strips, neonatal pulse oximetry equipment, hearing screening equipment, ((and)) centrifuges, and nasopharyngeal or nasal swabs for appropriate testing;

(b) Nitrous oxide as an analgesic, self-administered inhalant in a 50 percent blend with oxygen, and associated equipment, including a scavenging system;

(c) Ultrasound machine used in the real time ultrasound of pregnant uterus for the confirmation of viability, first trimester dating, third trimester presentation, placental location, and amniotic fluid assessment; and

(d) Neonatal and adult resuscitation equipment and medication, including airway devices and epinephrine for neonates.

(2) Pharmacies may issue breast pumps, compression stockings and belts, maternity belts, diaphragms and cervical caps, glucometers and testing strips, iron supplements, prenatal vitamins, and recommended vaccines as specified in subsection (3) (e) through (j) of this section ordered by licensed midwives.

(3) In addition to prophylactic ophthalmic medication, postpartum oxytocic, vitamin K, Rho (D) immune globulin, and local anesthetic medications as listed in RCW 18.50.115, licensed midwives may obtain and administer the following medications:

(a) Intravenous fluids limited to Lactated Ringers, 5% Dextrose with Lactated Ringers, and 0.9% sodium chloride;

(b) Sterile water for intradermal injections for pain relief;

(c) Magnesium sulfate for prevention of maternal seizures pending transport;

(d) Epinephrine for use in maternal anaphylaxis and resuscitation and neonatal resuscitation, pending transport;

- (e) Measles, Mumps, and Rubella (MMR) vaccine to nonimmune postpartum women;
- (f) Tetanus, diphtheria, acellular pertussis (Tdap) vaccine for use in pregnancy;
- (g) Hepatitis B (HBV) birth dose for any newborn administration;
- (h) HBIG and HBV for any neonates born to hepatitis B+ mothers;
- (i) Influenza vaccine for use in pregnancy;
- (j) Any vaccines recommended by the CDC advisory committee on immunization practices for pregnant or postpartum people or infants in the first two weeks after birth, as it existed on the effective date of this section;
- (k) Terbutaline to temporarily decrease contractions pending emergent intrapartal transport;
- (l) Antibiotics for intrapartum prophylaxis of Group B beta hemolytic Streptococcus (GBS) per current CDC guidelines; and
- (m) Antihemorrhagic drugs to control postpartum hemorrhage including, but not limited to, intravenous tranexamic, oxytocin, misoprostol, methylergonovine maleate (oral or intramuscular), and prostaglandin F2 alpha.

(4) The client's records must contain documentation of all medications administered.

~~((5) The midwife must have a procedure, policy or guideline for the use of each drug and device. A midwife may not administer a legend drug or use a legend device for which he or she is not qualified by education, training, and experience.)~~

[Statutory Authority: RCW 18.50.135 and 18.50.115. WSR 19-15-005, § 246-834-250, filed 7/5/19, effective 8/5/19. Statutory Authority: RCW 18.50.115. WSR 05-06-118, § 246-834-250, filed 3/2/05, effective 4/2/05. Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-834-250, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 18.50.040(3) and 18.50.115. WSR 88-12-040 (Order PM 732), § 308-115-250, filed 5/27/88.]

AMENDATORY SECTION (Amending WSR 15-24-092, filed 11/30/15, effective 12/31/15)

WAC 246-834-370 Data submission. (1) As a condition of renewing a license, a licensed midwife shall report data on all courses of care for every mother and newborn under the midwife's care to a national or state research organization approved by the department. If the mother declines to participate in the collection of data, the midwife shall follow the protocol of the approved national or state research organization.

(2) The licensed midwife shall verify compliance by submitting an attestation to the department annually with the license renewal. For good cause, the secretary may waive reporting requirements.

(3) For auditing purposes, written confirmation of full participation in data collection from the approved state or national research organization shall suffice.

(4) The midwife must keep her/his data and participation records; data and participation records will not be submitted directly to the department.

[Statutory Authority: RCW 18.50.102 and 18.50.135. WSR 15-24-092, § 246-834-370, filed 11/30/15, effective 12/31/15.]

WSR 22-07-030
PROPOSED RULES
DEPARTMENT OF
CHILDREN, YOUTH, AND FAMILIES
[Filed March 11, 2022, 9:36 a.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: WAC 110-30-0230
How does an alleged perpetrator challenge a founded CPS finding?, and
110-30-0280 What happens if CPS management does not change the founded
CPS finding?

Hearing Location(s): On April 26, 2022, telephonic. Oral comments may be made by calling 360-902-8084 and leaving a voicemail that includes the comment and an email or physical mailing address where department of children, youth, and families (DCYF) will send its response. Comments received through and including April 26, 2022, will be considered.

Date of Intended Adoption: April 27, 2022.

Submit Written Comments to: DCYF Rules Coordinator, email dcyf.rulescoordinator@dcyf.wa.gov, <https://dcyf.wa.gov/practice/policy-laws-rules/rule-making/participate/online>, by April 26, 2022.

Assistance for Persons with Disabilities: Contact DCYF rules coordinator, phone 360-902-7956, email dcyf.rulescoordinator@dcyf.wa.gov, by April 22, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules:

- Require requests for review of child abuse and neglect founded findings to be made as instructed in the founded finding notice and within 30 days of the date the alleged perpetrator receives the notice of founded finding;
- Clarify that a founded finding decision may not be challenged further if a request for review is not made within 30 days after the alleged perpetrator receives the notice of founded finding; and
- Require requests for administrative hearings of founded finding decisions to be made as instructed in the notice of decision and filed with the office of administrative hearings no later than 30 days after a founded finding decision is received.

Reasons Supporting Proposal: The proposed rules incorporate content that is explicitly and specifically dictated by RCW 26.44.125.

Statutory Authority for Adoption: RCW 26.44.125(7).

Statute Being Implemented: RCW 26.44.125.

Rule is necessary because of state court decision, *Rios-Garcia v. Department of Social and Health Services*, 18 Wn. App. 2d 660, 493 P.3d 143 (2021).

Name of Proponent: DCYF, governmental.

Name of Agency Personnel Responsible for Drafting: Tarassa Froberg, 360-515-8092; Implementation and Enforcement: DCYF, statewide.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The proposals are exempt under RCW 34.05.328 (5)(b)(v).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

March 11, 2022
Brenda Villarreal
Rules Coordinator

OTS-3074.3

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-30-0230 How ((does an)) do alleged perpetrators challenge ((a)) their founded CPS findings? (1) In order to challenge ((a)) founded CPS findings, ((the)) alleged perpetrators must ((make a written)) request in writing for CPS to review ((the)) their founded CPS findings of child abuse or neglect. ((The CPS finding notices must provide the information regarding all steps necessary to request a review.))

(2) ((The)) Alleged perpetrators must request ((must be provided to the same CPS office that sent)) the CPS review of their founded CPS finding notice within ((thirty)) 30 calendar days from the date ((the alleged perpetrator receives the CPS finding notice (RCW 26.44.125)) they received it. If requests are not made within 30 days, alleged perpetrators may not further challenge the findings.

[WSR 18-14-078, recodified as § 110-30-0230, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 26.44.125 (2) and (4). WSR 13-17-126, § 388-15-085, filed 8/21/13, effective 9/21/13. Statutory Authority: RCW 74.13.031, 74.04.050, and chapter 26.44 RCW. WSR 02-15-098 and 02-17-045, § 388-15-085, filed 7/16/02 and 8/14/02, effective 2/10/03.]

AMENDATORY SECTION (Amending WSR 20-04-019, filed 1/27/20, effective 2/27/20)

WAC 110-30-0280 What happens if CPS management does not change ((the)) founded CPS findings after their reviews? (1) If CPS management does not change ((the)) founded CPS findings after their review, ((the)) alleged perpetrators ((has)) have the right to further challenge ((that finding)) CPS management's decision by requesting an administrative hearing.

(2) ((The)) Requests for ((a)) administrative hearings must be in writing and ((sent to)) filed with the office of administrative hearings ((. WAC 110-03-0070 lists the current address)) (OAH) as instructed in the notice of the CPS management review decision.

(3) ((The office of administrative hearings must receive the written request for a hearing within thirty)) Requests for administrative hearings with the OAH must be filed within 30 calendar days from the date that the ((person requesting the hearing receives)) alleged perpetrators received the CPS management review decision.

[Statutory Authority: 2017 c 6. WSR 20-04-019, § 110-30-0280, filed 1/27/20, effective 2/27/20. WSR 18-14-078, recodified as § 110-30-0280, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.13.031, 74.04.050, and chapter 26.44 RCW. WSR 02-15-098 and 02-17-045, § 388-15-105, filed 7/16/02 and 8/14/02, effective 2/10/03.]

WSR 22-07-034

PROPOSED RULES

EASTERN WASHINGTON UNIVERSITY

[Filed March 11, 2022, 2:28 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-02-037.

Title of Rule and Other Identifying Information: Chapter 172-64 WAC, alcohol policy.

Hearing Location(s): On April 28, 2022, at 2:00 p.m., at Eastern Washington University (EWU), Tawanka 215A, Cheney, WA 99004.

Date of Intended Adoption: May 20, 2022.

Submit Written Comments to: Annika Scharosch, EWU, 211 Tawanka Hall, Cheney, WA 99004, email ascharosch@ewu.edu, fax 509-359-6724, by April 29, 2022.

Assistance for Persons with Disabilities: Contact Annika Scharosch, phone 509-359-6724, fax 509-359-2874, email ascharosch@ewu.edu, by April 25, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This updates the rules regarding alcohol on campus to permit the possession, tasting, brewing, and other use of alcoholic beverages in academic courses that have a class 15 permit through the Washington state liquor and cannabis board.

Reasons Supporting Proposal: To support academic courses.

Statutory Authority for Adoption: RCW 28B.35.120(12).

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: EWU, governmental.

Name of Agency Personnel Responsible for Drafting: Annika Scharosch, 211 Tawanka Hall, 509-359-6724; Implementation and Enforcement: Dr. David May, 214 Showalter Hall, 509-359-6362.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. Pursuant to RCW 34.5.328 [34.05.328] (5)(a)(i), this agency is not an agency mandated to comply with RCW 34.05.328. Further, the agency does not voluntarily make that section applicable to the adoption of this [these] rules pursuant to subsection (5)(a)(ii), and to date, the joint administrative rules review committee has not made the section applicable to the adoption of this rule [these rules].

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

March 11, 2022

Annika Scharosch

Associate Vice President for Civil Rights
Compliance and Enterprise Risk Management

OTS-3644.1

NEW SECTION

WAC 172-64-035 Alcohol use in academic courses. This section establishes rules for academic courses that include possessing, tasting, serving, brewing, or otherwise using alcoholic beverages as part of the course curriculum. All such courses must:

- (1) Comply with all rules under RCW 66.20.010(12) and any additional provisions required by the Washington state liquor and cannabis board;
- (2) Maintain a current class 15 permit for the course;
- (3) All instructors must be at least 21 years old and have a current class 12 or 13 alcohol server permit;
- (4) Publish course fee descriptions which clearly indicate when part of the course fee will be used to purchase alcoholic beverages and/or ingredients for producing alcoholic beverages for use in the course;
- (5) Purchase, store, and dispose of alcoholic beverages and/or ingredients for producing alcoholic beverages per university procedures set forth by risk management and purchasing; and
- (6) Allow only course instructors with a current class 15 permit to transport alcoholic beverages in support of an academic course.

[]

AMENDATORY SECTION (Amending WSR 21-07-005, filed 3/4/21, effective 4/4/21)

WAC 172-64-040 Alcohol use at on-campus events and events off-campus that are sponsored by the university. (1) On university property. This section establishes rules for possessing, consuming, selling, and/or serving alcoholic beverages on university-owned or operated property, regardless of whether an event is sponsored by the university and regardless of whether event sponsors are affiliated with the university. This section does not apply to academic courses that are authorized by and subject to WAC 172-64-035.

- (a) Sponsor requirements. Sponsors of an event where alcohol is to be possessed, sold, served and/or consumed, must comply with the following requirements:
 - (i) Obtain written permission from the appropriate official(s) in advance of the event:
 - (A) Student clubs and organizations must obtain permission from the student activities office;
 - (B) For all other requests, sponsors must obtain permission from the vice president for business and finance or designee;
 - (ii) Contact event planning to request a banquet permit or a special occasion license per WAC 172-64-070;
 - (iii) Comply with all Washington state laws, chapter 172-64 WAC, all other university rules and policies; and any additional instructions provided to the event/activity sponsor as a condition of approval;
 - (iv) Ensure Washington state alcohol serving requirements are enforced:
 - (A) Event sponsors must ensure that all persons designated to serve alcohol are at least ((twenty-one)) 21 years old and have received alcohol server training;

(B) Event sponsors must ensure that servers check ID and do not serve alcohol to any person who is under ((twenty-one)) 21 years old or who appears intoxicated;

(v) Prohibit serving alcohol during normal, university business hours unless an exception has been granted as part of the request under (a) (i) of this subsection;

(vi) Prohibit persons from bringing alcoholic beverages into the event unless specifically authorized by the banquet permit or special occasion license;

(vii) Prohibit persons from taking alcoholic beverages outside of the approved alcohol use area, except for beer/wine in the original unopened container that is sold or auctioned for off-premises consumption as specifically authorized by a special occasion license;

(viii) Provide food or snacks and nonalcoholic beverages at the same place as alcoholic beverages and feature nonalcoholic beverages at least as prominently as alcoholic beverages;

(ix) Inform university police of the event and consult with the university police about appropriate security measures.

The university police shall determine appropriate security measures to be taken for on-campus events where alcohol is to be possessed, consumed, sold, and/or served. University police shall coordinate with the event's sponsor and appropriate university personnel to assist in compliance with state laws and university rules; and

(x) Gifts, awards, and rewards. Alcoholic beverages may not be provided as gifts or awards to any person as part of any event conducted under a special occasion license.

(2) Publicity and advertising of events on campus and off campus.

The following rules apply to any events on university-owned or operated property as well as university-sponsored events off campus.

(a) Events conducted under a banquet permit are by invitation only and may not be advertised to the public.

(b) All announcements and advertisements concerning an event including, but not limited to, flyers, notices, posters, banners, tee-shirts and newspaper and radio announcements, must:

(i) Note the availability of nonalcoholic beverages at least as prominently as the availability of alcoholic beverages;

(ii) State that proper identification is required in order to be served or sold alcoholic beverages; and

(iii) Not make reference to the amount of alcoholic beverages available at the event.

(c) All announcements and advertisements, as well as any promotions of specific alcoholic beverage brands at the event:

(i) Must not make reference to any form of drinking contest.

Drinking contests and similar activities which encourage the rapid and/or excessive consumption of alcoholic beverages are prohibited;

(ii) Must not portray drinking as a solution to personal or academic problems or as necessary to social, sexual, or academic success; and

(iii) Must not encourage any form of alcohol abuse or place emphasis on quantity or frequency of consumption.

(3) University-sponsored events off campus.

(a) All university-sponsored events involving the consumption of alcohol must take place outside of normal university business hours unless permission is obtained in advance from the vice president for business and finance or designee.

(b) If a university sponsored event is hosted off campus at the site of a private vendor, individuals may purchase alcohol from the

private vendor. The private vendor is responsible for complying with all relevant state and local laws.

(c) If a university sponsored event is hosted off campus at an employee's private residence, university employees are prohibited from serving or providing alcohol to any university students.

[Statutory Authority: RCW 28B.35.120(12). WSR 21-07-005, § 172-64-040, filed 3/4/21, effective 4/4/21; WSR 15-14-077, § 172-64-040, filed 6/29/15, effective 7/30/15; WSR 14-24-037, § 172-64-040, filed 11/24/14, effective 12/25/14; WSR 03-18-070, § 172-64-040, filed 8/29/03, effective 9/29/03.]

AMENDATORY SECTION (Amending WSR 15-14-077, filed 6/29/15, effective 7/30/15)

WAC 172-64-050 Alcohol use during group trips. (1) This section applies to the possession and consumption of alcoholic beverages by university employees and/or students when participating in a university sponsored or supported group trip including, but not limited to, group attendance at conferences, conventions, seminars, training, field trips, etc., except that this section does not apply to academic courses that are authorized by and subject to WAC 172-64-035.

(2) Unless an exception has been granted per subsection (3) of this section, during supervised periods of a group trip (e.g., when work, instruction, or official business is being conducted) employees and students shall not possess or consume alcohol.

(3) Exceptions may be granted if the trip involves attending a function where the consumption of alcohol is a cultural or social expectation. Examples of such functions include, but are not limited to, receptions, cultural exchanges, and professional gatherings. Requests for exceptions must be made to the appropriate vice president. For approved requests, participants must:

(a) Comply with all applicable local laws; and

(b) Comply with all additional requirements and/or instructions provided as a condition of the approval.

(4) Notwithstanding any other rules or exceptions under this policy, university employees and students shall not:

(a) Consume alcohol during any period of time when they are responsible for the care and/or transportation of other group members;

(b) Transport alcoholic beverages in any vehicle, including personal and rental vehicles, used in support of a group trip.

[Statutory Authority: RCW 28B.35.120(12). WSR 15-14-077, § 172-64-050, filed 6/29/15, effective 7/30/15; WSR 14-24-037, § 172-64-050, filed 11/24/14, effective 12/25/14; WSR 03-18-070, § 172-64-050, filed 8/29/03, effective 9/29/03.]

AMENDATORY SECTION (Amending WSR 21-07-005, filed 3/4/21, effective 4/4/21)

WAC 172-64-070 Banquet permits and special occasion licenses. A banquet permit or a special occasion license must be obtained in order to permit alcoholic beverages to be possessed, sold, served, and/or

consumed on university owned or operated property and/or at university-sponsored events and activities. This section does not apply to academic courses that are authorized by and subject to WAC 172-64-035.

Banquet permits and special occasion licenses have specific rules concerning alcohol serving, sales (including raffles and gifts), event advertising, and related issues as contained in chapters 314-05 and 314-18 WAC.

Event organizers must contact EWU event planning to initiate the process for obtaining a banquet permit or special occasion license. Banquet permits and special occasion licenses are issued by the Washington state liquor and cannabis board.

[Statutory Authority: RCW 28B.35.120(12). WSR 21-07-005, § 172-64-070, filed 3/4/21, effective 4/4/21; WSR 14-24-037, § 172-64-070, filed 11/24/14, effective 12/25/14; WSR 03-18-070, § 172-64-070, filed 8/29/03, effective 9/29/03.]

AMENDATORY SECTION (Amending WSR 14-24-037, filed 11/24/14, effective 12/25/14)

WAC 172-64-090 Alcohol sales and delivery on university owned or operated property. Vendors may not sell and/or deliver alcohol on property owned or operated by the university except as is necessary to support a function that has obtained a banquet permit or a special occasion license, or for sales or deliveries to an on-campus entity or business holding a valid liquor license, or to an academic department holding a valid class 15 permit.

[Statutory Authority: RCW 28B.35.120(12). WSR 14-24-037, § 172-64-090, filed 11/24/14, effective 12/25/14; WSR 03-18-070, § 172-64-090, filed 8/29/03, effective 9/29/03.]

WSR 22-07-035

PROPOSED RULES

EASTERN WASHINGTON UNIVERSITY

[Filed March 11, 2022, 2:37 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-02-036.

Title of Rule and Other Identifying Information: Chapter 172-90 WAC, Student academic integrity.

Hearing Location(s): On April 28, 2022, at 2:00 p.m., at Eastern Washington University (EWU), Tawanka [Hall] 215A, Cheney, WA 99004.

Date of Intended Adoption: May 20, 2022.

Submit Written Comments to: Annika Scharosch, EWU, 211 Tawanka Hall, Cheney, WA 99004, email ascharosch@ewu.edu, fax 509-359-6724, by April 29, 2022.

Assistance for Persons with Disabilities: Contact Annika Scharosch, phone 509-359-6724, fax 509-359-2874, email ascharosch@ewu.edu, by April 25, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This updates the rules regarding academic integrity at EWU. In addition to some minor changes, the language modifies the appointment process for the academic integrity board, calculation of dates during the process, and the process for adjudicating significant academic integrity issues that may rise to the level of a potential suspension or expulsion.

Reasons Supporting Proposal: To update and simplify the academic integrity process.

Statutory Authority for Adoption: RCW 28B.35.120(12).

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: EWU, governmental.

Name of Agency Personnel Responsible for Drafting: Annika Scharosch, 211 Tawanka Hall, 509-359-6724; Implementation and Enforcement: Dr. David May, 214 Showalter Hall, 509-359-6362.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. Pursuant to RCW 34.5.328 [34.05.328] (5)(a)(i), this agency is not an agency mandated to comply with RCW 34.05.328. Further, the agency does not voluntarily make that section applicable to the adoption of this [these] rules pursuant to subsection (5)(a)(ii), and to date, the joint administrative rules review committee has not made the section applicable to the adoption of this rule [these rules].

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

March 11, 2022

Annika Scharosch

Associate Vice President for Civil Rights
Compliance and Enterprise Risk Management

OTS-3645.1

AMENDATORY SECTION (Amending WSR 17-11-052, filed 5/15/17, effective 6/15/17)

WAC 172-90-010 General. These rules establish standards for student academic integrity at Eastern Washington University (EWU). EWU expects the highest standards of academic integrity of its students. Academic integrity is the responsibility of both students and instructors. The university supports the instructor in setting and maintaining standards of academic integrity. Academic integrity is the foundation of a fair and supportive learning environment for all students. Personal responsibility for academic performance is essential for equitable assessment of student accomplishments. Charges of violations of academic integrity are reviewed through a process that allows for student learning and impartial review.

These rules apply to all EWU instructors, staff, and students admitted to the university, including conditional or probationary admission, and to all departments and programs, in all locations, including online. These rules provide procedures for resolving alleged violations by students. All academic integrity proceedings are brief adjudicative proceedings and shall be conducted in an informal manner. If the potential sanction for a violation of this policy is a suspension or expulsion, the academic integrity board will refer the matter for a full adjudicative proceeding under the Student conduct code, chapter 172-121 WAC, as detailed below in WAC 172-90-100((r)) and 172-90-160((, and 172-90-170)).

[Statutory Authority: RCW 28B.35.120(12). WSR 17-11-052, § 172-90-010, filed 5/15/17, effective 6/15/17; WSR 15-14-079, § 172-90-010, filed 6/29/15, effective 7/30/15; WSR 14-20-082, § 172-90-010, filed 9/29/14, effective 10/30/14.]

AMENDATORY SECTION (Amending WSR 19-07-045, filed 3/14/19, effective 4/14/19)

WAC 172-90-020 Responsibilities. (1) Associate vice president for academic policy (AVP): The AVP is primarily responsible for the university academic integrity program. The AVP shall:

- (a) Oversee the academic integrity program;
- (b) ~~((Appoint the chair and members of the academic integrity board (AIB);~~
- (c) ~~((e))~~ Maintain a system for academic integrity reporting and recordkeeping;
- (d) ~~((d))~~ Serve as the final authority in administering the academic integrity program;
- (e) ~~((e))~~ Maintain all academic integrity records per Washington state records retention standards;
- (f) ~~((f))~~ Coordinate academic integrity training for instructors and students, as needed or requested; and
- (g) ~~((g))~~ Develop and/or facilitate development of academic integrity program support resources, including guides, procedures, web presence, training materials, presentations, and similar resources.

Throughout this chapter and unless otherwise stated, the term "AVP," shall mean the AVP who is handling the academic integrity case or their designee.

(2) Academic integrity board (AIB): The academic integrity board is a standing committee of the faculty organization. The academic integrity board is responsible for administering and managing academic integrity functions.

(a) The AIB shall:

- (i) Promote academic integrity at EWU;
- (ii) Review academic integrity cases, make determinations as to whether a violation occurred, and impose academic and/or institutional sanctions;
- (iii) Conduct academic integrity board hearings;
- (iv) Assist the AVP in development of academic integrity program support resources;
- (v) Respond, as appropriate, to campus needs related to the academic integrity program;
- (vi) Coordinate AIB activities with the AVP; and
- (vii) Continually assess academic integrity process outcomes to ensure equitability of sanctions vis-à-vis violations.

(b) The AIB is appointed by the ((AVP,)) faculty senate based on recommendations from represented groups (e.g., colleges, library, ASE-WU). The AIB will select among its members a chair and vice chair. Board composition or membership may be modified to support university needs with the consent of the AVP and approval of the provost. At a minimum, AIB membership will include:

(i) Two members from each college, one primary and one alternate. Both must hold or have held instructor rank. The primary and alternate must be from different academic departments. The alternate shall serve when a case involves an instructor in the primary member's own department. The alternate may also serve when the primary member is not available. One of the primary members shall also be designated as vice chair.

(ii) One member representing EWU libraries and one alternate.

(iii) One student member representing ASEWU.

(iv) One chair (does not vote except to break a tie).

(c) The AIB holds regular meetings every two weeks at fixed times and reviews cases at these meetings. The AIB also conducts AIB hearings, as needed, for academic integrity cases involving possible sanctions of suspension or expulsion. AIB reviews and hearings are held in abeyance during holidays, academic breaks, and other times when no classes are scheduled. AIB reviews and hearings may be canceled in other circumstances with the consent of the AIB chair. Any member who is unavailable shall inform the AIB chair who will arrange for a replacement.

(d) A quorum shall consist of three voting members plus the chair or vice chair.

(3) Instructors shall:

(a) Know and follow the academic integrity rules and policies of the university;

(b) Include, in each course syllabus, a reference to university academic integrity standards and a clear statement that suspected violations will be handled in accordance with those standards;

(c) Hold students responsible for knowing these rules;

(d) Foster an environment where academic integrity is expected and respected;

(e) Endeavor to detect and properly handle violations of academic integrity; and

(f) Support and comply with the determinations of the AIB and the AVP.

(4) Students shall:

(a) Demonstrate behavior that is honest and ethical in their academic work; and

(b) Know and follow the academic integrity rules and policies of the university.

[Statutory Authority: RCW 28B.35.120(12) and 42.56.070. WSR 19-07-045, § 172-90-020, filed 3/14/19, effective 4/14/19. Statutory Authority: RCW 28B.35.120(12). WSR 17-11-052, § 172-90-020, filed 5/15/17, effective 6/15/17; WSR 15-14-079, § 172-90-020, filed 6/29/15, effective 7/30/15; WSR 14-20-082, § 172-90-020, filed 9/29/14, effective 10/30/14.]

AMENDATORY SECTION (Amending WSR 19-07-045, filed 3/14/19, effective 4/14/19)

WAC 172-90-100 Violations and sanctions. (1) **Violations:** Violations of academic integrity involve the use or attempted use of any method or technique enabling a student to misrepresent the quality or integrity of any of his or her work. Violations of academic integrity include, but are not limited to:

(a) Plagiarism: Representing the work of another as one's own work;

(b) Preparing work for another that is to be used as that person's own work;

(c) Cheating by any method or means;

(d) Knowingly and willfully falsifying or manufacturing scientific or educational data and representing the same to be the result of scientific or scholarly experiment or research; or

(e) Knowingly furnishing false information to a university official relative to academic matters.

(2) **Classes of violations:**

(a) Class I violations are acts that are mostly due to ignorance, confusion and/or poor communication between instructor and class, such as an unintentional violation of the class rules on collaboration. Sanctions for class I offenses typically include a reprimand, educational opportunity, and/or a grade penalty on the assignment/test.

(b) Class II violations are acts involving a deliberate failure to comply with assignment directions, some conspiracy and/or intent to deceive, such as use of the internet when prohibited, fabricated end-notes or data, or copying answers from another student's test. Sanctions for class II offenses typically include similar sanctions as described for class I violations, as well as a course grade penalty or course failure.

(c) Class III violations are acts of violation of academic integrity standards that involve significant premeditation, conspiracy and/or intent to deceive, such as purchasing or selling a research paper. Sanctions for class III violations typically include similar sanctions as given for class I and II violations, as well as possible removal from the academic program and/or suspension or expulsion.

(3) **Sanctions:** A variety of sanctions may be applied in the event that a violation of academic integrity is found to have occurred. Sanctions are assigned based primarily on the class of the violation and whether or not the student has previously violated academic integrity rules. Absent extenuating circumstances, assigned sanctions are

imposed without delay and are not held in abeyance during appeal actions. Sanctions may be combined and may include, but are not limited to:

- (a) Verbal or written reprimand;
- (b) Educational opportunity, such as an assignment, research or taking a course or tutorial on academic integrity;
- (c) Grade penalty for the assignment/test;
- (d) Course grade penalty;
- (e) Course failure;
- (f) Removal from the academic program;
- (g) Suspension for a definite period of time; and
- (h) Expulsion from the university.

If a student was previously found to have violated an academic integrity standard, the sanction imposed for any subsequent violations should take into account the student's previous behavior. Sanctions of suspension or expulsion may be noted on a student's transcript.

(4) Sanctioning authorities:

(a) Instructors may impose reprimands, educational opportunities, grade penalties, and/or course failure sanctions and may recommend more severe sanctions.

(b) The academic integrity board (AIB) has the authority to impose the same sanctions as an instructor, or to modify any sanctions imposed by the instructor. In addition, the AIB may remove a student from an academic program, with the concurrence of the instructor and the department chair. ~~((The AIB may also refer the case for an AIB hearing per WAC 172-90-170 for cases where possible sanctions include suspension or expulsion.))~~

~~((An AIB hearing panel's recommendation to suspend or expel a student will be forwarded to the director of student rights and responsibilities.))~~ If, after determining that a student has engaged in an academic integrity code violation and imposing the academic sanctions identified in (a) and/or (b) of this subsection, the AIB believes that a suspension or expulsion may be appropriate, the AIB may, in addition to imposing such sanctions, refer the case to the director of student rights and responsibilities for a full hearing under the student conduct code, chapter 172-121 WAC. If the AIB recommends a case for a possible suspension or expulsion, the director of student rights and responsibilities will ensure the student is provided with a full hearing under the student conduct code, chapter 172-121 WAC. In such cases, a member of the AIB hearing panel will ~~((serve as the "complainant" for purposes of the student conduct code process. The AIB hearing panel member will explain the hearing panel's findings and recommendations to the conduct review officer. The conduct review officer))~~ provide a written statement for the student conduct hearing as to why the case has been forwarded to student rights and responsibilities. The student disciplinary council will make its own factual determinations and may impose a sanction of suspension or expulsion, or a lesser sanction as set forth in the student conduct code, in accordance with the student conduct code. The student disciplinary council cannot impose an academic sanction as those are determined by the AIB. The student disciplinary council's sanctions are in addition to any sanctions imposed by the AIB.

[Statutory Authority: RCW 28B.35.120(12) and 42.56.070. WSR 19-07-045, § 172-90-100, filed 3/14/19, effective 4/14/19; WSR 18-06-020, § 172-90-100, filed 2/27/18, effective 3/30/18. Statutory Authority: RCW 28B.35.120(12). WSR 17-11-052, § 172-90-100, filed 5/15/17, effective

6/15/17; WSR 15-14-079, § 172-90-100, filed 6/29/15, effective 7/30/15; WSR 14-20-082, § 172-90-100, filed 9/29/14, effective 10/30/14.]

AMENDATORY SECTION (Amending WSR 19-07-045, filed 3/14/19, effective 4/14/19)

WAC 172-90-120 Initiation. (1) **Reporting:** Each member of the university community is responsible for supporting academic integrity standards. Any person who suspects a violation of these rules is expected to report their suspicion to the course instructor or other appropriate university official. Students are strongly encouraged to report suspected violations to the course instructor, the AVP, or other university official.

Throughout this chapter, the term "instructor" shall refer to the instructor or other university official who reports a suspected violation under this chapter.

A person who knowingly makes a false allegation that a violation of these rules has occurred, will be subject to disciplinary action as appropriate.

(2) **Authority:** The primary responsibility for bringing a charge of violating academic integrity standards rests with the instructor. Graduate assistants, teaching assistants, research assistants, student workers, exam proctors, online coordinators and any other persons who assist or support an instructor in teaching should report suspected violations of academic integrity standards to the instructor of record.

Instructors may be represented by their academic department chair in cases where the instructor is unavailable or otherwise unable to actively participate in the process.

(3) **Contact student:** If an instructor suspects that a violation has occurred, the instructor may elect to discuss the matter with the student or contact the student via email or other form of electronic communication prior to taking any other action.

(4) **Instructor action:** In response to a report or suspicion of violation of academic integrity standards, the instructor has the following options:

(a) **Dismiss the matter:** If the instructor concludes that there is no violation of these rules, the matter is over.

(b) **Resolve internally (internal resolution):** If the instructor believes that the student committed a class I violation of academic rules, the instructor may take one or more of the following actions without entering an official violation per subsection (5) of this section:

(i) Instruct the student on academic integrity standards and explain how the student failed to comply with those standards;
(ii) Allow the student to modify or redo the assignment; and/or
(iii) Provide the student with an educational opportunity to reiterate academic integrity (such as an assignment, research, course or tutorial on academic integrity).

Note: If an instructor intends to impose any sanction that will affect the student's course grade, he/she must initiate the academic integrity process; internal resolution may not be used in such cases.

If the student does not cooperate with the internal resolution, the instructor should initiate the formal academic integrity process

by reporting the violation as described in subsection (5) of this section.

(c) Initiate the academic integrity process: If the instructor believes that the student violated academic integrity standards and internal resolution is not appropriate, the instructor shall initiate the academic integrity process by reporting the violation to the AVP per institutional practice.

(5) **Report violation:** To initiate an academic integrity action, the instructor provides information regarding the violation to the AVP, including:

(a) A description of the alleged violation;

(b) A summary of any conversations the instructor has had with the student regarding the violation;

(c) The sanction(s) imposed and/or recommended by the instructor; and

(d) The method of resolution desired by the instructor (i.e., summary process, AIB review, or AIB hearing).

When reporting the violation, the instructor ((may)) will also submit documents (e.g., syllabus, test, essay, etc.) that are pertinent to the violation being reported. ((Alternatively, the instructor may elect to defer providing such documents unless or until the materials are later requested by the student, AVP, or the AIB.))

Instructors should initiate this process within seven calendar days after becoming aware of the suspected violation. If the instructor attempted to contact the student via email or another form of electronic communication and the student is not responsive, the instructor should initiate the process up to seven calendar days after the first electronic communication. In cases where the student has agreed to certain conditions to resolve the matter internally, per subsection (4)(b) of this section, and the student has failed to comply with those conditions, the instructor may initiate the process up to seven calendar days after the student has failed to meet a resolution condition.

(6) **AVP review.** After a violation has been reported, the AVP will determine whether the summary process((,)) or AIB review process((, ~~or AIB hearing process~~)) will be used.

In cases where the student has any prior violation, the AVP must process the case for AIB review under WAC 172-90-160((, ~~or AIB hearing under WAC 172-90-170~~)).

[Statutory Authority: RCW 28B.35.120(12) and 42.56.070. WSR 19-07-045, § 172-90-120, filed 3/14/19, effective 4/14/19. Statutory Authority: RCW 28B.35.120(12). WSR 17-11-052, § 172-90-120, filed 5/15/17, effective 6/15/17; WSR 15-14-079, § 172-90-120, filed 6/29/15, effective 7/30/15; WSR 14-20-082, § 172-90-120, filed 9/29/14, effective 10/30/14.]

AMENDATORY SECTION (Amending WSR 19-07-045, filed 3/14/19, effective 4/14/19)

WAC 172-90-140 Summary process. (1) **Initiation:** The summary process may be initiated when:

(a) The instructor and student both agree to the summary process;

(b) The AVP agrees that the summary process is appropriate to the circumstances;

(c) The student has no prior violations of academic integrity; and
(d) The alleged behavior would most likely not warrant a sanction of suspension or expulsion.

(2) **Student notification:** The AVP will notify the student of the violation, proposed sanctions, and of their response options. Notification will be made to the student's official university email address. If the student is no longer enrolled in the university, the AVP shall send the notification to the student's last known address. Notification will include:

(a) All information provided by the instructor when the violation was reported and all documents related to the alleged violation. However, information and documents should be redacted to the extent their release would compromise test or examination contents or if the documents include other student's education records;

(b) Documents related to the alleged violation;

(c) A description of the university's academic integrity rules and processes, including a list of possible sanctions;

(d) A description of the student's options; and

(e) Contact information for the AVP's office where the student can request further information and assistance.

(3) **Student response options:**

(a) **Concur:** The student may accept responsibility for the stated violation and accept all sanctions imposed and/or recommended by the instructor. The student indicates their acceptance by following the instructions provided with the notification. The AVP will coordinate sanctioning with the instructor and/or the AIB as needed.

(b) **Conference:** If a conference had not already occurred, the student may request to meet with the instructor in order to discuss the alleged violation and/or proposed sanction(s). If the instructor declines the request, the matter will be referred to the AIB for further review and action. The instructor and student may discuss the matter by any means that is agreeable to both (e.g., in-person, telephonically, or via email). The student shall contact the instructor to arrange a discussion time/method.

(i) In arranging a conference, the instructor shall make a reasonable effort to accommodate the student's preferences, but is not obligated to meet with the student outside of normal "office" hours. If the student and instructor cannot agree on a date/time to meet, the instructor or student may refer the matter to the AIB for review and action.

(ii) During a conference, the instructor and student will attempt to reach an agreement regarding the allegation and sanction(s).

(iii) If the student and instructor come to an agreement, the instructor will inform the AVP of the outcome. The AVP will coordinate sanctioning with the instructor and/or the AIB as needed.

(iv) If the student and the instructor cannot come to an agreement within seven ((instruction)) calendar days, the instructor will inform the AVP and the matter will then be referred for AIB review and action.

(c) **AIB review:** The student may request that the matter be referred to the AIB for review and further action.

(d) **Failure to respond:** If the student does not respond to the notification within ((three instruction)) seven calendar days, the AVP will send another notification to the student. Failure of the student to respond to the second notification within ((three instruction)) seven calendar days will be treated as an admission of responsibility

and acceptance of the proposed sanctions. The AVP will coordinate with the instructor to impose the appropriate sanction(s).

(4) **Extensions.** If any of the notifications in this process are sent to a student or faculty member outside of an academic term, the AVP may grant the student or faculty member a continuance to the deadline for responding.

[Statutory Authority: RCW 28B.35.120(12) and 42.56.070. WSR 19-07-045, § 172-90-140, filed 3/14/19, effective 4/14/19. Statutory Authority: RCW 28B.35.120(12). WSR 17-11-052, § 172-90-140, filed 5/15/17, effective 6/15/17; WSR 15-14-079, § 172-90-140, filed 6/29/15, effective 7/30/15; WSR 14-20-082, § 172-90-140, filed 9/29/14, effective 10/30/14.]

AMENDATORY SECTION (Amending WSR 20-21-026, filed 10/9/20, effective 11/9/20)

WAC 172-90-160 Academic integrity board review process. (1) **Initiation:** The AIB review process will be initiated when:

- (a) The instructor or student requests AIB review;
- (b) The instructor refers the matter to the AIB because the instructor and student could not agree to a conference date/time or did not reach an agreement during a conference; or
- (c) The AVP determines that the AIB review process is appropriate to the circumstances.

(2) **Scheduling:** Within ((five instruction)) seven calendar days of determining that an AIB review is in order, the AVP shall schedule a review for the next available meeting of the AIB.

(3) **Notification:** The AVP will notify the student, instructor, and AIB chair. Notification will include:

- (a) All information provided by the instructor when the violation was reported and all documents related to the alleged violation. However, any such information and documents that were previously provided to the student are not required to be included in this notification. Also, information and documents should be redacted to the extent their release would compromise test or examination contents or if the documents include other student's education records;
- (b) The date/time of the AIB review;
- (c) Instructions on how to submit documents, statements, and other materials for consideration by the AIB;
- (d) A clear statement that the AIB review is a closed process (no student, instructor or person other than the board is present at the review);
- (e) A description of the specific rules governing the AIB review process;
- (f) A description of the university's academic integrity rules and processes; and
- (g) Contact information for the AVP's office where the student and/or instructor can request further information and assistance. Notifications will strongly encourage the student to contact the AVP to ensure that the student understands the process, the violation, and the potential sanctions.

(4) **Student and instructor response:** The student must prepare a written statement and submit the statement to the AVP's office within ((three instruction)) seven calendar days after receiving the AIB re-

view notice. The student may include any relevant written documentation, written third-party statements, or other evidence deemed relevant to the student's interests. Unless already provided, the instructor should submit the syllabus, the relevant test/assignment, and other materials that are pertinent to the violation to the AVP's office.

(5) **Failure to respond:** If the student does not respond to the notification of the AIB review within ((three instructional)) seven calendar days, the AVP will send another notification to the student. Failure of the student to respond to the second notification within ((three instruction)) seven calendar days will be treated as an admission of responsibility and acceptance of ((the proposed)) AIB approved sanctions. The AVP will coordinate sanctioning with the instructor and/or the AIB as needed. If ((a recommended sanction requires higher level authority to impose, the AIB will proceed with a hearing.

((6))), after determining that a student has engaged in an academic integrity code violation and imposing the academic sanctions, the AIB believes that a suspension or expulsion may be appropriate, the AIB may, in addition to imposing such sanctions, refer the case to the director of student rights and responsibilities for a full hearing under the student conduct code, chapter 172-121 WAC, for the student disciplinary council to make a determination as to whether or not suspension or expulsion should also be imposed. The hearing before the student disciplinary council will be de novo and separate from any findings and sanctions imposed by the AIB.

(6) **Extensions.** If any of the notifications in this process are sent to a student or faculty member outside of an academic term, the AVP may grant the student or faculty member a continuance to the deadline for responding.

(7) **Proceedings:** The board's responsibility is to review the statements and other materials provided by each party, review other relevant records, information, or materials, and make a determination as to whether the alleged academic integrity violation occurred. The board primarily reviews written evidence. Neither the student nor the instructor is permitted to attend the AIB review. The board may, at its discretion, consult with the instructor, the student or others as deemed appropriate or necessary. All evidence collected in this process will be made available to the student and/or instructor upon request.

((7)) (8) **Sanctions:** The board will determine what, if any, sanctions will be imposed. The board may impose the same sanctions assigned and/or recommended by the instructor, or may impose greater or lesser sanctions. If the student has any previous violation(s) of academic integrity standards, the AIB may increase the sanction imposed to account for repeat offenses. If the ((board decides to pursue sanctions that include suspension or expulsion, the board shall initiate an AIB hearing per WAC 172-90-170.

((8))) AIB believes a suspension or expulsion may be appropriate, the AIB will make its own findings of responsibility and may impose an academic sanction that is within its authority. The AIB may then refer the case for a full hearing under the student conduct code, chapter 172-121 WAC, for the student disciplinary council to make a determination as to whether or not suspension or expulsion should also be imposed. The hearing before the student disciplinary council will be de novo and separate from any findings and sanctions imposed by the AIB.

(9) **Conclusion:** The board should conclude its review and issue a decision within ((thirty)) 30 calendar days after the violation was initially reported. The AVP shall notify the student and instructor of

the board's decisions, along with the right to request reconsideration.

((+9)) **(10) Requests for review:** Either the student or the instructor may request reconsideration by the provost or designee by submitting a request in writing to the provost or designee within ((twenty-one)) 21 calendar days after the board issues its written decision. The provost or designee shall allow the student and the instructor an opportunity to respond in writing to the request for review. The student and instructor's responses, if any, must be submitted within ((five instructional)) seven calendar days of the request for review. If the student has a case pending under the student conduct code based on the same alleged misconduct, the timelines for requesting review and the timelines for responding will be stayed until the student disciplinary council issues its decision under the student conduct code. If the AIB recommended a suspension or expulsion and the case was forwarded for a full hearing under the student conduct code, the imposition of a sanction of suspension or expulsion may be appealed in accordance with the appeals process set forth in WAC 172-121-130. If the AIB imposed a sanction, such as an XF grade or removal from an academic program, such sanction may be appealed to the provost in accordance with this section.

After reviewing the responses and materials considered by the board, the provost or designee shall issue a decision in writing within ((twenty)) 21 calendar days of receipt of the request for review. The decision must include a brief statement of the reasons for the provost or designee decision and notice that judicial review may be available. All decisions of the provost or designee are final and no appeals within the university are permitted. Judicial review may be available under chapter 34.05 RCW.

[Statutory Authority: RCW 28B.35.120(12) and 42.56.070. WSR 20-21-026, § 172-90-160, filed 10/9/20, effective 11/9/20; WSR 19-07-045, § 172-90-160, filed 3/14/19, effective 4/14/19. Statutory Authority: RCW 28B.35.120(12). WSR 17-11-052, § 172-90-160, filed 5/15/17, effective 6/15/17; WSR 15-14-079, § 172-90-160, filed 6/29/15, effective 7/30/15; WSR 14-20-082, § 172-90-160, filed 9/29/14, effective 10/30/14.]

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 172-90-170 Academic integrity board hearing.

WSR 22-07-040
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Developmental Disabilities Administration)
[Filed March 14, 2022, 10:20 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-15-010.

Title of Rule and Other Identifying Information: WAC 388-845-2019

What modifications to waiver services apply during the COVID-19 outbreak?

Hearing Location(s): On April 26, 2022, at 10:00 a.m., Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington [Street S.E.], Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>; or virtual. Due to the COVID-19 pandemic, hearings are being held virtually. Please see the DSHS website for the most current information.

Date of Intended Adoption: Not before April 27, 2022.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHRSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m. on April 26, 2022.

Assistance for Persons with Disabilities: Contact Shelley Tencza, rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email tenczsa@dshs.wa.gov [tencza@dshs.wa.gov], by 5:00 p.m. on April 12, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule makes temporary allowances necessary to address the health and safety of waiver recipients and help control the spread of COVID-19. The allowances in this rule were approved by the Centers for Medicare and Medicaid Services (CMS) in an Appendix K waiver, the purpose of which is to address the effects of the COVID-19 public health emergency. These temporary allowances will end according to direction from CMS.

Reasons Supporting Proposal: This rule is necessary to help control the spread of COVID-19.

Statutory Authority for Adoption: RCW 71A.12.030.

Statute Being Implemented: Chapter 71A.12 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: DSHS, Developmental disabilities administration, governmental.

Name of Agency Personnel Responsible for Drafting: Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, 360-407-1500; Implementation and Enforcement: Ann Vasilev, P.O. Box 45310, Olympia, WA 98504-5310, 360-407-1551.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, phone 360-407-1500, fax 360-407-0955, TTY 1-800-833-6388, email Chantelle.Diaz@dshs.wa.gov.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: A business should incur no more-than-minor costs when complying with this rule because the rule primarily affects the way services may be delivered by allowing services to be delivered: Remotely, in excess of previous limits, and in more settings than previously allowed. Allowances in this rule are options for clients and providers to help reduce the spread of COVID-19. Providing services remotely should not increase costs because providers already have telephones and both telephonic and video calls are allowed. If a provider delivers services in excess of previous limits the provider will receive reimbursement for the services delivered. Allowing services to be delivered in more settings than before is also optional; a client may continue to receive the service in the setting they received it previously.

March 10, 2022
Katherine I. Vasquez
Rules Coordinator

SHS-4794.8NEW SECTION

WAC 388-845-2019 What modifications to waiver services apply during the COVID-19 outbreak? (1) Notwithstanding any contrary requirement under this title, changes under this section to DDA's home and community-based waivers are effective immediately and necessary to respond to managing the COVID-19 outbreak. All changes, except the provision of remote waiver services, require prior approval by the DDA director of the division of field services or designee and will be assessed on a case-by-case basis. An allowance in this section is valid as long as it is approved by the Centers for Medicare and Medicaid Services through the medicaid waiver process.

(2) The following changes to waiver services are temporary, effective immediately, and necessary to respond to managing the COVID-19 outbreak.

(a) All waiver services except goods may be offered remotely by providers when travel to the waiver participant is not possible due to COVID-19 infection or exposure.

(b) Limits to the number of respite hours a client may receive that are generated in the CARE assessment are temporarily suspended. The amount of respite hours a client may receive are determined by DDA.

(c) The basic plus, CIIIBS, and individual and family services waiver aggregate budgets may be exceeded for COVID-19-related health and safety needs.

(d) Respite provided out-of-state may be provided in excess of 30 days.

(e) Community guide and community engagement may be provided to more than one client at a time.

(f) Staff and family consultation may be provided to more than one client at a time.

(g) Assistive technology is available on all five waiver programs when a waiver participant requires a technology in order to receive

waiver-funded remote supports, to increase, maintain, or improve independence with daily living, to increase safety, or to facilitate social communication. Assistive technology is only available to the participant when access to technologies through other resources is not possible. Assistive technology includes:

- (i) The evaluation of the needs of the waiver participant, including a functional evaluation of the participant in the participant's customary environment;
- (ii) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices;
- (iii) Selecting, designing, fitting, customizing, adapting, applying, retaining, repairing, or replacing assistive technology devices;
- (iv) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
- (v) Training or technical assistance for the participant and if appropriate, the participant's family;
- (vi) Training or technical assistance for professionals, including individuals providing education and rehabilitation services, employers, or other individuals who provide services to, employ, or are otherwise involved in the assistive technology related life functions of individuals with disabilities; and
- (vii) Distance-based observation and reporting provided by an assistive technology distance-based observation and reporting specialist.

(h) Assistive technology on the basic plus waiver is included as part of the list of aggregate services.

(i) If transportation is necessary to prevent illness or meet a client's immediate health and safety needs, waiver transportation services may be used to travel to a place where the client will not be receiving waiver services (e.g., transportation to a family member's home).

(3) If a client is displaced from their home because of quarantine or hospitalization, or if a provider is unavailable due to illness or business closure, the following waiver services may be provided in a hotel, shelter, church, other facility-based setting, or the home of a direct-care worker when those supports are not available through the medicaid state plan or another legally liable funding source:

- (a) Residential habilitation;
- (b) Respite care;
- (c) Positive behavior support;
- (d) Staff and family consultation;
- (e) Behavioral health stabilization- positive behavior support;
- (f) Behavioral health stabilization- crisis diversion beds;
- (g) Nurse delegation; and
- (h) Skilled nursing.

(4) Positive behavior support and staff and family consultation may be provided in an acute care setting such as a hospital or short-term institutional setting if:

- (a) DDA determines that no other alternatives are available and a nonintegrated setting is the only setting available to meet the client's health and safety needs;
- (b) The waiver service provider is not otherwise funded by another resource; and

(c) The waiver services do not duplicate services already available in that setting.

(5) The following changes to waiver service provider qualifications are temporary, effective immediately, and necessary to respond to managing the COVID-19 outbreak.

(a) Staff and family consultation may include emergency preparedness consultation support from a provider trained in emergency management or a similar field with a current DDA contract.

(b) Respite care may be provided by currently contracted positive behavior support providers.

(6) Specialized medical equipment and supply, specialized equipment and supply, and assistive technology provider types may include the use of a purchase card and community choice guides when supply or cost impacts occur due to COVID-19.

(7) The following changes to level-of-care evaluations and re-evaluations for waiver participants are temporary, effective immediately, and necessary to respond to managing the COVID-19 outbreak.

(a) A client's services may continue and the level-of-care reassessment may be postponed up to one year if due to illness or quarantine:

(i) The client, their representative, or a DDA employee are unable to participate in the reassessment; or

(ii) There is insufficient time for the case manager to complete the annual reassessment paperwork.

(b) On a case-by-case basis, the time limit for approving a client's expired person-centered service plan may be extended if:

(i) The plan currently meets the client's needs; and

(ii) Monthly remote or telephonic monitoring is provided to ensure the plan continues to meet the client's needs.

(c) Telephonic assessments may occur in place of face-to-face assessments on a case-by-case basis. An initial assessment may be conducted telephonically when needed to prevent potential exposure related to COVID-19.

(d) For initial CARE assessments, employees may complete the assessment and person-centered service plan via the telephone or other electronic means and then do a brief in-person visit before moving the assessment to current.

(e) If the previsit questionnaire response indicates it is not safe to do an in-person visit, services can be authorized prior to an in-person visit occurring.

(f) A person-centered service plan, or revisions to a person-centered service plan, may be approved with a retroactive approval date for service needs identified to mitigate harm or risk directly related to COVID-19 impacts. Telephonic (or other information technology medium) assessments may occur when the assessment cannot occur due to impacts of COVID-19.

(8) CIIBS waiver quarterly face-to-face meeting requirement may be provided telephonically when a face-to-face meeting cannot occur due to client or client representative health concerns or staffing availability.

[]

WSR 22-07-058
PROPOSED RULES
LIQUOR AND CANNABIS
BOARD

[Filed March 16, 2022, 10:33 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-20-067.

Title of Rule and Other Identifying Information: New WAC 314-03-060 Axe throwing at liquor licensed premises. The Washington state liquor and cannabis board (WSLCB) proposes a new rule section allowing axe throwing at liquor licensed premises with the approval of a safety operating plan. WAC 314-29-030 Group 3 license violations. WSLCB proposes a technical amendment to the penalty schedule for violations of a board-approved operating plan to add a cross-reference to the proposed new rule section related to axe throwing at liquor licensed premises.

Hearing Location(s): On April 27, 2022, at 10:00 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, WSLCB will not provide a physical location for this hearing to promote social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held instead. Board members, presenters, and staff will all participate remotely. The public may log in using a computer or device, or call-in using a phone, to listen to the meeting through the Microsoft Teams application. The public may provide verbal comments during the specified public comment and rules hearing segments. For more information about board meetings, please visit https://lcb.wa.gov/Boardmeetings/Board_meetings.

Date of Intended Adoption: No earlier than May 11, 2022.

Submit Written Comments to: Audrey Vasek, Policy and Rules Coordinator, P.O. Box 43080, Olympia, WA 98504-3080, email rules@lcb.wa.gov, fax 360-704-5027, by April 27, 2022.

Assistance for Persons with Disabilities: Contact Anita Bingham, ADA coordinator, human resources, phone 360-664-1739, fax 360-664-9689, TTY 711 or 1-800-833-6388, email anita.bingham@lcb.wa.gov, by April 20, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule proposal is to establish a framework for axe throwing activities at liquor licensed premises. The proposed new rules require licensees that offer axe throwing to create a safety operating plan that includes protocols for monitoring patron intoxication and consumption of alcoholic beverages, and a floor plan designating where alcohol may be sold or consumed and identifying the axe throwing areas where alcohol is not allowed. The proposed rules also outline how to request a change in operating plan and include a reference to penalties for noncompliance.

Reasons Supporting Proposal: Axe throwing has become increasingly popular as an activity that liquor licensed businesses would like to offer to their customers. Beginning in 2018, the agency began receiving applications from businesses that either had axe throwing as their primary activity and wanted to add liquor service, or from established liquor licensed businesses that wanted to add axe throwing as an on-premises activity. WSLCB considers axe throwing at liquor licensed premises to be a high-risk activity with implications for public health and safety. Current rules do not provide any framework to address the public health and safety concerns that arise when alcohol

service is combined with axe throwing. New rules are needed to provide such a framework, as well as consistency for licensees and applicants that seek agency approval to offer axe throwing.

Statutory Authority for Adoption: RCW 66.08.030.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: WSLCB, governmental.

Name of Agency Personnel Responsible for Drafting: Audrey Vasek, Policy and Rules Coordinator, 1025 Union Avenue, Olympia, WA 98501, 360-664-1758; Implementation: Becky Smith, Director of Licensing, 1025 Union Avenue, Olympia, WA 98501, 360-664-1753; and Enforcement: Chandra Brady, Director of Enforcement and Education, 1025 Union Avenue, Olympia, WA 98501, 360-664-1726.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rules do not qualify as a type of rule requiring a cost-benefit analysis under RCW 34.05.328(5). WSLCB is not a listed agency under RCW 34.05.328 (5)(a)(i), so the cost-benefit analysis requirements in RCW 34.05.328 are not applicable to the proposed rules unless voluntarily applied or made applicable by the joint administrative rules review committee under RCW 34.05.328 (5)(a)(ii).

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated.

Estimated Costs of Compliance: The proposed rules would allow businesses the new option to add axe throwing as an activity at liquor licensed premises with WSLCB approval of a safety operating plan. Because this rule proposal concerns an entirely optional new activity, this proposal does not impose new or additional regulatory burden or increased administrative costs. However, businesses seeking to combine liquor service and axe throwing will be required to submit a safety operating plan and receive approval from WSLCB prior to providing axe throwing activities at their liquor licensed premises.

The proposed rules state that the safety operating plan must address how the licensee will mitigate safety concerns associated with axe throwing, including the following: Protocols for monitoring consumption of alcoholic beverages and ensuring patrons are not intoxicated prior to axe throwing, and a floor plan for the premises. The floor plan is required to include designated areas where alcoholic beverages may be sold, served, or consumed on-premises that are separate from the axe throwing zone, as well as barriers to keep the axe throwing zone separate from the designated consumption areas and prevent axes from traveling out of the axe throwing zone. The proposed rules do not require that businesses use specific methods or materials to comply with these requirements.

Within the parameters established by the proposed rules, businesses have the flexibility to develop a unique safety operating plan. The agency anticipates that preparation of such a plan will not impose more-than-minor administrative costs associated with submission, including the following:

- One and one half hours of licensee time to complete forms and communicate with WSLCB regarding the safety operating plan;
- One half hour of licensee time to be present for final inspection; and

- *Estimated total cost of compliance:* \$50 for two hours of licensee time for administrative activities. According to the 2021 Occupational Employment and Wage Statistics (OEWS) Online Databook available in the ESD labor market report library (<https://esd.wa.gov/labormarketinfo/report-library>), the estimated average hourly wage in Washington State for Secretaries and Administrative Assistants, Except Legal, Medical, and Executive (using the SOC Code 43-6014) is \$22.68. Based on that data, the estimated cost for these administrative activities is \$45.36 (\$22.68 avg. hourly wage x 2 hour = \$45.36). For the purpose of the minor cost calculations, this estimated administrative cost is rounded up to \$50.

Note: These administrative costs are one-time costs that can be amortized over the period of business operation. Additional administrative costs might be incurred if a licensee decides to make changes to their safety operating plan after it has been approved. Under the proposal, the licensee would be required to resubmit the safety operating plan to the agency for approval.

Based on the anticipated administrative costs described above, WSLCB applied an estimated cost of compliance of \$50 when analyzing whether the proposed rules impose more than "minor costs" as defined in RCW 19.85.020(2) on businesses potentially impacted by the proposed rules.

Minor Cost Threshold Estimates: Businesses potentially impacted by the proposed rules include liquor licensees that might choose to add axe throwing activities (such as Spirits, Beer, and Wine (SBW) Restaurants and Beer/Wine (BW) restaurants, taverns, nightclubs, and snack bars; and distillery, winery, and brewery tasting rooms/additional locations) and axe throwing businesses that might choose to add liquor service. The agency applied the following North American Industry Classification System (NAICS) codes to estimate minor cost thresholds for licensees:

Business Type	NAICS Code	Description from the 2017 NAICS Manual (https://www.census.gov/library/publications/2017/econ/2017-naics-manual.html)
Distilleries and Craft Distilleries	312140 Distilleries	"This industry comprises establishments primarily engaged in one or more of the following: (1) distilling potable liquors (except brandies); (2) distilling and blending liquors; and (3) blending and mixing liquors and other ingredients." There are no separate NAICS codes available for craft distilleries.
Wineries	312130 Wineries	"This industry comprises establishments primarily engaged in one or more of the following: (1) growing grapes and manufacturing wines and brandies; (2) manufacturing wines and brandies from grapes and other fruits grown elsewhere; and (3) blending wines and brandies."
Breweries and Microbreweries	312120 Breweries	"This industry comprises establishments primarily engaged in brewing beer, ale, lager, malt liquors, and nonalcoholic beer." There are no separate NAICS codes available for microbreweries.
Taverns and Nightclubs	722410 Drinking Places (Alcoholic Beverages)	"This industry comprises establishments known as bars, taverns, nightclubs, or drinking places primarily engaged in preparing and serving alcoholic beverages for immediate consumption. These establishments may also provide limited food services."
SBW Restaurants	722511 Full-Service Restaurants	"This U.S. industry comprises establishments primarily engaged in providing food services to patrons who order and are served while seated (i.e., waiter/waitress service) and pay after eating. These establishments may provide this type of food service to patrons in combination with selling alcoholic beverages, providing carryout services, or presenting live nontheatrical entertainment."

Business Type	NAICS Code	Description from the 2017 NAICS Manual (https://www.census.gov/library/publications/2017/econ/2017-naics-manual.html)
BW Restaurants	722513 Limited Service Restaurants	"This U.S. industry comprises establishments primarily engaged in providing food services (except snack and nonalcoholic beverage bars) where patrons generally order or select items and pay before eating. Food and drink may be consumed on premises, taken out, or delivered to the customer's location. Some establishments in this industry may provide these food services in combination with selling alcoholic beverages."
Snack Bars	722515 Snack and Nonalcoholic Beverage Bars	"This U.S. industry comprises establishments primarily engaged in (1) preparing and/or serving a specialty snack, such as ice cream, frozen yogurt, cookies, or popcorn, or (2) serving nonalcoholic beverages, such as coffee, juices, or sodas for consumption on or near the premises. These establishments may carry and sell a combination of snack, nonalcoholic beverage, and other related products (e.g., coffee beans, mugs, coffee makers) but generally promote and sell a unique snack or nonalcoholic beverage."
Axe Throwing Establishments	713990 All Other Amusement and Recreation Industries	"This industry comprises establishments (except amusement parks and arcades; gambling industries; golf courses and country clubs; skiing facilities; marinas; fitness and recreational sports centers; and bowling centers) primarily engaged in providing recreational and amusement services." Corresponding Index Entry: "Axe throwing clubs."

As shown in the table below, the estimated cost of compliance for businesses in each of these industries does not exceed the minor cost estimate for these industries, so a small business economic impact statement is not required under RCW 19.85.030.

2017 Industry NAICS Code	Estimated Cost of Compliance	Industry Description	NAICS Code Title	Minor Cost Estimate = MAX (WT, RT, and \$100)	Wage Threshold (WT) 1% of Avg Annual Payroll (0.01*Avg Pay)	Revenue Threshold (RT) 0.3% of Avg Annual Gross Business Income (0.003*AvgGBI)
312140	\$50	Distilleries and Craft Distilleries	Distilleries	\$2,806.14	\$2,806.14 2020 Dataset pulled from USBLS	\$1,707.60 2020 Dataset pulled from DOR
312130	\$50	Wineries	Wineries	\$3,905.58	\$3,905.58 2020 Dataset pulled from ESD	\$3,560.33 2020 Dataset pulled from DOR
312120	\$50	Breweries and Microbreweries	Breweries	\$3,085.32	\$2,803.58 2020 Dataset pulled from USBLS	\$3,085.32 2020 Dataset pulled from DOR
722410	\$50	Taverns and Nightclubs	Drinking Places (Alcoholic Beverages)	\$1,386.88	\$1,386.88 2020 Dataset pulled from USBLS	\$1,376.99 2020 Dataset pulled from DOR
722511	\$50	SBW Restaurants	Full-Service Restaurants	\$3,221.87	\$3,221.87 2020 Dataset pulled from ESD	\$2,464.57 2020 Dataset pulled from DOR
722513	\$50	BW Restaurants	Limited-Service Restaurants	\$5,011.98	\$5,011.98 2020 Dataset pulled from ESD	\$3,976.52 2020 Dataset pulled from DOR
722515	\$50	Snack Bars	Snack and Nonalcoholic Beverage Bars	\$2,722.49	\$2,722.49 2020 Dataset pulled from ESD	\$2,307.40 2020 Dataset pulled from DOR
713990	\$50	Axe Throwing Establishments	All Other Amusement and Recreation Industries	\$1,303.44	\$1,303.44 2020 Dataset pulled from ESD	\$546.88 2020 Dataset pulled from DOR

The revenue and wage thresholds used to determine the minor cost estimates for each of the business industries listed in the table above were calculated using the minor cost threshold calculator (*updated October 2021*) provided by the governor's office for regulatory innovation and assistance (ORIA). For more information, see the ORIA Regulatory Fairness Act Tools & Guidance web page at https://www.oria.wa.gov/site/alias_oria/934/Regulatory-Fairness-Act-Support.aspx.

March 16, 2022

David Postman

Chair

OTS-3661.1

NEW SECTION

WAC 314-03-060 Axe throwing at liquor licensed premises. (1)

Axe throwing combined with alcohol consumption is considered a high-risk activity. Licensees should follow industry best practices for safe axe throwing participation. A liquor licensee must receive approval from the board's licensing division prior to providing axe throwing activities at liquor licensed premises.

(2) The liquor licensee or liquor license applicant must submit a safety operating plan addressing how the licensee will mitigate safety concerns associated with axe throwing at the liquor licensed premises. The safety operating plan must include the following:

(a) Protocols for monitoring alcohol consumption and ensuring patrons are not intoxicated prior to axe throwing, including:

(i) Designated MAST-certified staff in the axe throwing area at all times to monitor alcohol consumption;

(ii) Prohibiting patrons who appear intoxicated from axe throwing;

(iii) Deescalating patrons who appear intoxicated and are uncooperative or hostile; and

(iv) Training employees on the protocols included in the safety operating plan; and

(b) A floor plan for the premises. The floor plan must include the following:

(i) The designated consumption areas where alcohol may be sold, served, or consumed on-premises; and

(ii) The axe throwing areas. The axe throwing areas must be separate from the designated consumption areas. Alcohol is not allowed in the axe throwing areas. The axe throwing areas must have barriers to separate the axe throwing activity from the designated consumption areas. Barriers must prevent axes from traveling out of the axe throwing areas, including behind the throwers. "Barriers" means walls, fences, cages, or similar physical obstructions.

(3) Changes to a licensee's safety operating plan must be submitted to the board's licensing division for approval. The safety operating plan must remain in effect until the licensee's change request is approved by the board's licensing division or the board determines changes are necessary due to safety concerns.

(4) Failure to adhere to the licensee's approved safety operating plan is subject to the penalty structure outlined in WAC 314-29-030, violations of a board approved operating plan.

[]

OTS-3662.1

AMENDATORY SECTION (Amending WSR 09-21-050, filed 10/14/09, effective 11/14/09)

WAC 314-29-030 Group 3 license violations. Group 3 violations are violations involving licensing requirements, license classification, and special restrictions.

Violation Type	1st Violation	2nd Violation in a two-year window	3rd Violation in a two-year window	4th Violation in a two-year window
True party of interest violation. RCW 66.24.010(1) WAC 314-12-030	Cancellation of license			
Failure to furnish required documents. WAC 314-12-035	Cancellation of license			
Misrepresentation of fact. WAC 314-12-010	Cancellation of license			
Misuse or unauthorized use of liquor license (operating outside of license class, lending or contracting license to another person/entity). Chapter 66.24 RCW WAC 314-02-015 WAC 314-02-041 WAC 314-02-045 WAC 314-02-065 WAC 314-02-070 WAC 314-02-075 WAC 314-02-090 WAC 314-02-095 WAC 314-02-100 WAC 314-02-105 WAC 314-02-110 WAC 314-12-030	5 day suspension or \$1,500 monetary option	Cancellation of license		
Operating plan: Violations of a board-approved operating plan. WAC 314-03-060 WAC 314-16-270 WAC 314-16-275	5 day suspension or \$500 monetary option	7 day suspension or \$1,500 monetary option	10 day suspension with no monetary option	Cancellation of license
Sale of alcohol in violation of a board-approved local authority restriction. Chapter 66.24 RCW	5 day suspension or \$500 monetary option	7 day suspension or \$1,500 monetary option	10 day suspension with no monetary option	Cancellation of license
Sale of alcohol in violation of a board-approved alcohol impact area restriction. WAC 314-12-215	5 day suspension or \$500 monetary option	7 day suspension or \$1,500 monetary option	10 day suspension with no monetary option	Cancellation of license

Violation Type	1st Violation	2nd Violation in a two-year window	3rd Violation in a two-year window	4th Violation in a two-year window
Catering endorsement violation. WAC 314-02-060 WAC 314-02-061	5 day suspension or \$250 monetary option	5 day suspension or \$1,500 monetary option	10 day suspension or \$3,000 monetary option	Cancellation of license

[Statutory Authority: RCW 66.08.030. WSR 09-21-050, § 314-29-030, filed 10/14/09, effective 11/14/09. Statutory Authority: RCW 66.08.030, 66.24.010, 66.24.120. WSR 03-09-015, § 314-29-030, filed 4/4/03, effective 5/5/03.]

WSR 22-07-065
PROPOSED RULES
HIGHLINE COLLEGE

[Filed March 17, 2022, 3:19 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-03-095.

Title of Rule and Other Identifying Information: Title IX student conduct code procedures: Amending WAC 132I-126-505, 132I-126-565, and 132I-126-585.

Hearing Location(s): On Wednesday, May 4, 2022, at 3-4 p.m. Join Zoom meeting <https://highline.zoom.us/j/5287770355>, meeting ID 528 777 0355. Please contact Ay Saechao, dean of student support and funding services, 206-592-3303 or asaechao@highline.edu, for accommodation requests.

Date of Intended Adoption: May 4, 2022.

Submit Written Comments to: Ay Saechao, 2400 240th Des Moines, WA 98198-9800, email asaechao@highline.edu, fax 206-592-3772, 206-592-3303, by 5 p.m., May 10, 2022.

Assistance for Persons with Disabilities: Contact Ay Saechao, phone 206-592-3303, fax 206-592-3772, email asaechao@highline.edu, skorst@highline.edu [skorst@highline.edu], by 5 p.m., Monday, May 2, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Recent guidance provided by the United States Department of Education Office of Civil Rights dated August 24, 2021, allows the college to remove cross-examination requirements for Title IX cases.

Reasons Supporting Proposal: Amending the Title IX policy and procedures is necessary to be in alignment with recent federal guidance and case law.

Statutory Authority for Adoption: RCW 28B.50.140.

Statute Being Implemented: RCW 28B.50.140.

Rule is necessary because of federal law, and federal court decision 85 F.R. 30575, *Victim Rights Law Center et al. v. Cardona*, No. 1:20-cv-11104, 2021 WL 3185743 (D. Mass. July 28, 2021).

Name of Proponent: Highline College, public.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Ay Saechao, 2400 South 240th Street, Des Moines, WA 98198, 206-592-3303.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

March 17, 2022
Ay Saechao
Dean of Student Support
and Funding Services

OTS-3561.1

AMENDATORY SECTION (Amending WSR 21-14-003, filed 6/23/21, effective 7/24/21)

WAC 132I-126-505 Order of precedence. This supplemental procedure applies to allegations of sexual harassment subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. Part 106. To the extent these supplemental hearing procedures conflict with the college's standard disciplinary procedures, WAC 132I-126-010 through 132I-126-300, these supplemental procedures shall take precedence. Highline College may, at its discretion, contract with an administrative law judge or other person to act as presiding officer and assign such presiding officer to exercise any or all of the duties in lieu of the student conduct committee and committee chair.

[Statutory Authority: Chapter 34.05 RCW and RCW 28B.50.140(13); 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. WSR 21-14-003, § 132I-126-505, filed 6/23/21, effective 7/24/21.]

AMENDATORY SECTION (Amending WSR 21-14-003, filed 6/23/21, effective 7/24/21)

WAC 132I-126-565 Evidence. The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

(1) Relevance: The committee chair shall review all questions for relevance and shall explain on the record their reasons for excluding any question based on lack of relevance.

(2) Relevance means that information elicited by the question makes facts in dispute more or less likely to be true.

(3) Questions or evidence about a complainant's sexual predisposition or prior sexual behavior are not relevant and must be excluded, unless such question or evidence:

(a) Is asked or offered to prove someone other than the respondent committed the alleged misconduct; or

(b) Concerns specific incidents of prior sexual behavior between the complainant and the respondent, which are asked or offered on the issue of consent.

(4) ~~((Cross-examination required: If a party or witness does not submit to cross-examination during the live hearing, the committee must not rely on any statement by that party or witness in reaching a determination of responsibility.)~~

(5) No negative inference: The committee may not make an inference regarding responsibility solely on a witness's or party's absence from the hearing or refusal to answer questions.

(6) Privileged evidence: The committee shall not consider legally privileged information unless the holder has effectively waived the privilege. Privileged information includes, but is not limited to, information protected by the following:

(a) Spousal/domestic partner privilege;
(b) Attorney-client and attorney work product privileges;

- (c) Privileges applicable to members of the clergy and priests;
- (d) Privileges applicable to medical providers, mental health therapists, and counselors;
- (e) Privileges applicable to sexual assault and domestic violence advocates; and
- (f) Other legal privileges identified in RCW 5.60.060.

[Statutory Authority: Chapter 34.05 RCW and RCW 28B.50.140(13); 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. WSR 21-14-003, § 132I-126-565, filed 6/23/21, effective 7/24/21.]

AMENDATORY SECTION (Amending WSR 21-14-003, filed 6/23/21, effective 7/24/21)

WAC 132I-126-585 Appeals. ((1) The parties shall have the right to appeal from the initial order's determination of responsibility and/or dismissal of an allegation(s) of sexual harassment in a formal complaint. The right to appeal will be subject to the same procedures and time frames set forth in WAC 132I-126-300.

(2) The president or their delegate will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether the disciplinary sanction and condition(s) imposed in the initial order are affirmed, vacated, or amended, and, if amended, set forth any new disciplinary sanction and/or condition(s).

(3) President's office shall serve the final decision on the parties simultaneously.) (1) All parties, including the student conduct officer in their capacity as a representative of the college, have the right to appeal from the determination of responsibility and/or from a dismissal, in whole or part, of a formal complaint during the investigative or hearing process. Appeals must be in writing and filed with the president's office within 21 days of service of the initial order or notice of dismissal. Appeals must identify the specific findings of fact and/or conclusions of law in the initial order or dismissal that the appealing party is challenging and must contain argument as to why the appeal should be granted. Failure to file a timely appeal constitutes a waiver of the right to appeal and the initial order or dismissal shall be deemed final.

(2) Upon receiving a timely appeal, the president's office will serve a copy of the appeal on all parties, who will have 10 days from the date of service to submit written responses to the president's office addressing issues raised in the appeal. Failure to file a timely response constitutes a waiver of the right to participate in the appeal. Upon receipt of written responses, the president's office shall serve copies of the responses to the other parties.

(3) Parties receiving a copy of the responses shall have five days in which to submit a written reply addressing issues raised in the responses to the president's office.

(4) The president or their delegate, based on their review of parties' submissions and the hearing or investigative record, will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether a dismissal if affirmed or denied, or if the disciplinary sanctions and conditions imposed in the initial order are affirmed, vacated, or amended, and, if amended, set forth the new disciplinary sanctions and conditions.

(5) The president's office shall serve the final decision on the parties simultaneously.

(6) All administrative decisions reached through this process are and may be judicially appealed pursuant to applicable provisions of chapter 34.05 RCW including, but not limited to, the timelines set forth in RCW 34.05.542. No decisions or recommendations arising from this disciplinary procedure will be subject to grievance pursuant to any collective bargaining agreement.

[Statutory Authority: Chapter 34.05 RCW and RCW 28B.50.140(13); 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. WSR 21-14-003, § 132I-126-585, filed 6/23/21, effective 7/24/21.]

WSR 22-07-071
PROPOSED RULES
UTILITIES AND TRANSPORTATION
COMMISSION

[Filed March 18, 2022, 11:40 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-15-127.

Title of Rule and Other Identifying Information: Rule making to implement HB 1841, chapter 170, Laws of 2020, which pertains to the establishment of minimum crew size on certain trains. This rule making is recorded as Docket TR-200536 at the utilities and transportation commission (UTC).

Hearing Location(s): On May 19, 2022, at 9:30 a.m., <https://utc-wa-gov.zoom.us/j/96726813953?pwd=dGd1alo4M01PUWNTY1NRaEhKalJQdz09>.

Public hearing to consider adoption of the proposed rule.

Date of Intended Adoption: May 19, 2022.

Submit Written Comments to: Amanda Maxwell, Executive Director and Secretary, P.O. Box 47250, Olympia, WA 98504-7250, email records@utc.wa.gov, 360-664-1160, by May 5, 2022.

Assistance for Persons with Disabilities: Contact human resources, phone 360-664-1160, TTY 360-586-8203, email human_resources@utc.wa.gov, by May 12, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In 2020, the legislature enacted chapter 170, Laws of 2020, which provided UTC with revised regulatory authority over train crew size. The legislation also added new sections to and repeals specific sections of chapter 81.40 RCW, necessitating a rule making to define Class I railroads, provide automatic waivers, and establish a process for UTC-ordered crew size increases.

Reasons Supporting Proposal: In 2020, the legislature enacted chapter 170, Laws of 2020, which provided UTC with revised regulatory authority over train crew size. This rule making enables UTC to implement the new law, establishing rules for UTC to apply specific definitions in the law, require minimum crew sizes on certain trains, grant automatic waivers to certain railroad carriers, order crew size increases when necessary, and assess fines for violations.

Statutory Authority for Adoption: RCW 80.01.040, 81.01.010, 81.04.160; chapter 81.40 RCW. RCW 81.40.150(1) states that UTC's "paramount obligation" is the furtherance of safety in railroad transportation. RCW 81.40.025 (4)(a) states that UTC "may order railroad carriers to increase the number of railroad employees in areas of increased risk to the public, passengers, railroad employees, or the environment ..."

Statute Being Implemented: RCW 81.40.005 through [81.40].025, [81.40].150.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: UTC, governmental.

Name of Agency Personnel Responsible for Drafting: Betty Young, 621 Woodland Square Loop S.E., Lacey, WA 98503, 360-292-5470; Implementation and Enforcement: Amanda Maxwell, 621 Woodland Square Loop S.E., Lacey, WA 98503, 360-664-1110.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to UTC as it is not one of the listed agencies in RCW 34.05.328 (5)(a)(i).

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. UTC is proposing to adopt rules that enable UTC to implement the law, apply specific definitions in the law, require minimum crew sizes on certain trains, grant automatic waivers to certain railroad carriers, order crew size increases when necessary, and assess fines for violations. On May 6, 2021, UTC mailed a notice to all stakeholders interested in the rule making, providing a copy of the draft rules and an opportunity to respond to a small business impact statement (SBEIS) questionnaire. The notice requested that entities affected by the proposed rules provide information about possible cost impacts of the rules with specific information for each rule that the entity identified as causing an impact. UTC did not receive any information in response to the questionnaire. On November 15, 2021, UTC sent a supplemental SBEIS questionnaire to affected entities, providing an additional opportunity to respond. UTC received no responses to the supplemental questionnaire. Based on the information available to it, UTC determined that the proposed rules merely implement the statute as required by the legislature.

March 18, 2022
Amanda Maxwell
Executive Director and Secretary

OTS-3674.1

AMENDATORY SECTION (Amending WSR 18-10-001, filed 4/18/18, effective 5/19/18)

WAC 480-62-125 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

"Class I railroad company" means a railroad company having annual operating revenues of ~~((250 million))~~ \$250,000,000 or more;

"Class II railroad company" means a railroad company having annual operating revenue of less than ~~((250 million))~~ \$250,000,000, but more than ~~((20 million))~~ \$20,000,000; and

"Class III railroad company" means a railroad company having annual operating revenues of ~~((20 million))~~ \$20,000,000 or less.

"Commission" means the Washington utilities and transportation commission.

"Contract crew transportation company" means any person, organization, company or other entity that operates one or more contract crew transportation vehicles.

"Contract crew transportation vehicle" means every motor vehicle designed to transport ~~((fifteen))~~ 15 or fewer passengers, including the driver, that is owned, leased, operated, or maintained by a person contracting with a railroad company or its agents, contractors, subcontractors, vendors, subvendors, secondary vendors, or subcarriers and used primarily to provide railroad crew transportation.

"Department of labor and industries" means the Washington state department of labor and industries.

"Department of transportation" means the Washington state department of transportation.

"On track equipment" means self-propelled equipment, other than locomotives, that can be operated on railroad tracks.

"Passenger carrying vehicle" means those buses, vans, trucks, and cars owned, operated, and maintained by a railroad company primarily used to transport railroad employees, other than in the cab of such vehicles, and are designed primarily for operation on roads which may or may not be equipped with retractable flanged wheels for operation on railroad tracks.

"Railroad" means every permanent road with a line of rails fixed to ties providing a track for cars or equipment drawn by locomotives or operated by any type of power, including interurban and suburban electric railroads, for the public use of conveying persons or property for hire, with all bridges, ferries, tunnels, equipment, switches, spurs, sidings, tracks, stations, and terminal facilities of every kind, used, operated, controlled, managed, or owned by or in connection therewith. Unless otherwise provided by rule, the term "railroad" does not include logging and industrial railroads, or street railways operating within the limits of any incorporated city or town.

"Railroad company" means every corporation, company, partnership, association, joint stock association, or person, their lessees, trustees, or receivers appointed by any court, and any common carrier owning, operating, controlling or managing any railroad or any cars or other equipment used on, or in connection with the railroad within this state.

"Railroad police officer" means a peace officer who is commissioned in his or her state of legal residence or state of employment by a railroad company to enforce state laws for the protection of railroad property, personnel, passengers and/or cargo.

"Remote-control area" means any place remote-control operations are conducted on a railroad.

"Remote-control operations" means ((controlling)) control of the movement of locomotives through the use of radio transmitter and receiver systems by persons not physically located at the controls within the confines of a locomotive cab.

"Remote-control zone" means a designated restricted access area ((where access is restricted)) in which remote-control operations may occur under alternative point protection procedures.

"State" means the state of Washington.

[Statutory Authority: RCW 80.01.040, 81.04.160, and 81.61.050. WSR 18-10-001 (Docket TR-170780, General Order R-591), § 480-62-125, filed 4/18/18, effective 5/19/18. Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 04-11-023 (Docket No. TR-021465, General Order No. R-514), § 480-62-125, filed 5/11/04, effective 6/11/04. Statutory Authority: RCW 80.01.040, 81.04.160, 81.24.010, 81.28.010, 81.28.290, 81.40.110, 81.44.010, 81.44.020, 81.44.101-81.44.105, and chapters 81.48, 81.53, 81.54, 81.60, and 81.61 RCW. WSR 01-04-026 (Docket No. TR-981102, General Order No. R-477), § 480-62-125, filed 1/30/01, effective 3/2/01.]

NEW SECTION

WAC 480-62-255 Minimum crew size on certain trains. (1) For the purpose of this section, unless the language or context indicates that a different meaning is clearly intended, the following definitions apply:

"Class I" means a railroad carrier designated as a class I railroad by the United States surface transportation board and its subsidiaries or is owned and operated by entities whose combined total railroad operational ownership and controlling interest meets the United States surface transportation board designation as a class I railroad carrier.

"Class III" means a railroad carrier designated as a class III railroad by the United States surface transportation board.

"Crewmember" has the same meaning as "operating craft employee" as defined in this section.

"Operating craft employee" means a person employed by a railroad carrier and identified as train or yard crew as defined in 49 C.F.R. Part 218.5.

"Other railroad carrier" means a railroad carrier that is not a class I carrier.

"Railroad carrier" means a carrier of persons or property upon vehicles, other than streetcars, operated upon stationary rails, the route of which is principally outside incorporated cities and towns. "Railroad carrier" includes any officers and agents of the railroad carrier.

(2) Any person, corporation, company, or officer of the court operating any railroad, railway, or any part of any railroad or railway, in the state as a common carrier of freight or passengers shall operate and manage all trains and switching assignments over its road with no less than two crewmembers.

(3) The minimum crew size requirement of subsection (2) of this section does not apply to: (a) Class III railroad carriers operating on their roads while at a speed of 25 miles per hour or less; (b) other railroad carriers in possession of an effective automatic waiver issued under subsection (4) of this section; or (c) one person remote control operations in compliance with 49 C.F.R. Parts 218 and 229, and any other applicable regulations regarding remote control operations.

(4) Other railroad carriers operating in the state on or after June 11, 2020, receive an automatic waiver of the minimum train crew size requirements of subsection (2) of this section that shall remain in effect until the commission terminates the effectiveness of such a waiver by order.

(5) The commission may order railroad carriers to increase the number of railroad employees, to require additional crewmembers, or direct the placement of additional crewmembers if the commission determines that the increase is necessary to protect the safety, health, and welfare of the public, passengers, or railroad employees, to prevent harm to the environment or to address site specific safety or security hazards. In issuing any order to increase the number of railroad employees, the commission may consider, but is not limited to, the factors found in RCW 81.40.025 (4)(b).

(6) Any railroad carrier in violation of this section may be subject to fines of not less than \$1,000 and not more than \$100,000 for each offense, as determined by the commission through order. In the event of a serious injury or fatality the commission may impose fines exceeding \$100,000 per offense.

[]

WSR 22-07-073
PROPOSED RULES
CRIMINAL JUSTICE
TRAINING COMMISSION

[Filed March 18, 2022, 11:49 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-02-053.

Title of Rule and Other Identifying Information: Peace, tribal police, and correction officer certification WAC changes. These WAC changes are to provide clarity and process to chapter 323, Laws of 2021, which provided substantial changes to peace, tribal police, and correction officer certification, decertification, written complaints, and other impacts to the certification RCW found in chapter 43.101 RCW.

Hearing Location(s): On April 27, 2022, at 10:00 a.m., at 19010 1st Avenue South, Burien, WA 98148; or virtually. Notice of the location of the meeting will be provided on the website at cjtc.wa.gov/about/commission-board-and-meetings.

Date of Intended Adoption: April 26, 2022.

Submit Written Comments to: Derek Zable, 19010 1st Avenue South, Burien, WA 98148, email dzable@cjtc.wa.gov, by April 24, 2022.

Assistance for Persons with Disabilities: Contact Derek Zable, phone 206-835-7350, email dzable@cjtc.wa.gov, by April 10, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These WAC changes are to provide clarity and process to chapter 323, Laws of 2021, which provided substantial changes to peace, tribal police, and correction officer certification, decertification, written complaints, and other impacts to the certification RCW found in chapter 43.101 RCW. WAC changes also include rule changes to the administrative hearing process, a definition section that is chapter wide, clarifies the background check requirements for hiring agencies, and provides general clean-up and WAC style compliance within the modified sections.

Statutory Authority for Adoption: RCW 43.101.080.

Statute Being Implemented: RCW 43.101.030, 43.101.080, 43.101.085, 43.101.095, 43.101.105, 43.101.115, 43.101.121, 43.101.126, 43.101.135, 43.101.145, 43.101.155, 43.101.157, 43.101.380, 43.101.400, and 43.101.460.

Rule is not necessitated by federal law, federal or state court decision.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Mike Devine, 19010 1st Avenue South, Burien, WA 98148, 206-835-7368.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; rule content is explicitly and specifically dictated by statute; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

March 18, 2022
Derek Zable
Records Manager

OTS-3681.2

Chapter 139-01 WAC
GENERAL ADMINISTRATION AND DEFINITIONS

AMENDATORY SECTION (Amending WSR 04-07-146, filed 3/23/04, effective 4/23/04)

WAC 139-01-100 Description of central and field organization.

The ((Washington state criminal justice training)) commission consists of the executive director, staff, and ((fourteen)) 21 commissioners. The executive director will approve recommendations for training ((pursuant to commission)) consistent with adopted goals and standards ((may be approved by the executive director of the commission. Other recommendations will be reviewed by the commissioners for approval or rejection. Approved)). The executive director will approve recommendations and other matters of the commission ((necessitating implementation or)) that require staff involvement ((will be assigned by the executive director)) to implement and will direct such assignments to appropriate personnel. The commissioners will review other recommendations for approval or rejection.

The business office of the commission is located at 3060 Willamette Drive N.E., Lacey, Washington 98516. The mailing address is Post Office Box 40905, Olympia, Washington 98504. It is maintained by the commission's executive director and staff from 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding holidays and the days the commission is closed, and serves as a central repository for the commission's records of administration and operation.

The Criminal Justice Training Center, 19010 1st Avenue, Burien, Washington 98148, serves as the commission's primary training site. Other training is conducted locally, regionally, or at centralized locations statewide, as determined by staff.

[Statutory Authority: RCW 43.101.080. WSR 04-07-146, § 139-01-100, filed 3/23/04, effective 4/23/04; WSR 00-17-017, § 139-01-100, filed 8/4/00, effective 9/4/00. Statutory Authority: RCW 43.101.080(2). WSR 86-19-021 (Order 1-B), § 139-01-100, filed 9/10/86.]

AMENDATORY SECTION (Amending WSR 86-19-021, filed 9/10/86)

WAC 139-01-310 (("Commission" defined.)) Definitions. ((As used in this chapter "commission" means the Washington state criminal jus-

~~tice training commission.)~~) (1) **Affiliation** means advocating for or providing material support or resources to extremist organizations by:

(a) Knowingly or publicly displaying, posting, or wearing associated items, symbols, costumes, insignias, slogans, tattoos, or body modifications on public property, private property, online, or digitally;

(b) Making public statements in support of an extremist group's activities including, but not limited to, online statements;

(c) Fund-raising for, or making personal contributions through donations, services, or payments of any kind to a group or organization that engages in extremist activities;

(d) Organizing or participating in the activities of an extremist organization;

(e) Recruiting or training others to engage in extremist activities;

(f) Recruiting or training others on behalf of an extremist organization;

(g) Creating, organizing, or taking a leadership role in a group or organization that engages in or advocates for extremist activities; or

(h) Actively demonstrating or rallying in support of extremist activities.

(2) **Commission** means the Washington state criminal justice training commission.

(3) **Conclusion** means the final disposition issued by an employing agency after it has conducted an investigation into alleged misconduct or policy violation.

(4) **Day** means one calendar day. Computation of time does not include the day of the act or event from which the designated period of time begins to run. The last day of the period shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next weekday that is not a legal holiday.

(5) **Discipline** means an oral reprimand (where a written record of the reprimand has been placed in an employee's file), written reprimand, suspension, demotion, or termination. Discipline does not include performance reviews, work plans, or corrective actions that do not include a reprimand or other adverse employment action.

(6) **Expired certification** means that an officer has had a break in service of over 60 months and their certification is no longer valid.

(7) **Extremist organization** means an organization or persons that:

(a) Seeks to undermine the democratic process through intimidation, violence, unlawful threat, or by depriving individuals of their rights under the United States Constitution or Washington state Constitution;

(b) Promotes the changing of American government structures through undemocratic means involving violence, unlawful threat, or intimidation;

(c) Promotes hatred, intolerance, unlawful discrimination, intimidation or violence against, public marginalization, or disenfranchisement of protected classes, including on the basis of sex, sexual orientation, gender, perceived gender, or gender expression, race, color, religion, ability, or national origin and other protected classes under RCW 49.60.030 and 43.101.105 (3)(h); or

(d) Espouses, advocates, or engages in using force, violence, or unlawful threat to further explicit racism, antisemitism, anti-Muslim,

white supremacy or any white nationalist ideology, or any ideology that discriminates based on religion or belief.

(8) **Final disposition** means an employing agency's final decision on a misconduct investigation. The final disposition is not dependent upon any appeals brought by an officer.

(9) **Findings or findings of fact and conclusion of law** means a determination based on a preponderance of the evidence whether alleged misconduct occurred; did not occur; occurred but was consistent with law and policy; or can neither be proven or disproven.

(10) **Lapsed certification** means that an officer has had a break in service of at least 24 months, but no more than 60 months, and that as a condition of continuing employment the officer must complete the commission's equivalency process.

(11) **Officers** unless otherwise specified, means full-time, general authority peace officers, tribal police officers with a recognized certified tribe, and corrections officers as defined in RCW 43.101.010 (6), (10), and (12).

(12) **Petitioner** means the commission's certification division.

(13) **Probationary periods or probationary terms** means conditions set by the commission for reinstatement of a suspended certification.

(14) **Respondent** means the certified officer against whom the petitioner has filed a statement of charges.

(15) **Retraining** means the teaching or reteaching of skills and conduct required to succeed as an officer and imposed by the commission's hearings panel in a final order pursuant to RCW 43.101.105.

(16) **Serious injury** means **substantial bodily harm** and **great bodily harm** as defined in RCW 9A.04.110 (4) (b) and (c).

(17) **Suspension** means the suspension of certification imposed by the commission's hearings panel in a final order pursuant to RCW 43.101.105.

(18) **Use of force** means any incident in which an officer's actions resulted in serious injury or death.

[Statutory Authority: RCW 43.101.080(2). WSR 86-19-021 (Order 1-B), § 139-01-310, filed 9/10/86.]

OTS-2600.3

AMENDATORY SECTION (Amending WSR 05-07-049, filed 3/11/05, effective 4/11/05)

WAC 139-03-010 Adoption of model rules of procedure. Practice and procedure before the commission shall ((be in accordance)) comport with the model rules of procedure adopted by the chief administrative law judge pursuant to RCW 34.05.250, as now or hereafter amended. The model rules hereby adopted are found in chapter 10-08 WAC. Other procedural rules adopted in this title are supplementary to the model rules of procedure. In the case of a conflict between the model rules of procedure and the procedural rules adopted in this title, the procedural rules adopted in this title shall govern.

((Peaee)) Officer certification proceedings before the commission are governed by chapter 139-06 WAC.

[Statutory Authority: RCW 43.101.080. WSR 05-07-049, § 139-03-010, filed 3/11/05, effective 4/11/05; WSR 00-17-017, § 139-03-010, filed 8/4/00, effective 9/4/00.]

OTS-2597.3

AMENDATORY SECTION (Amending WSR 19-07-036, filed 3/13/19, effective 4/13/19)

WAC 139-05-200 Requirement of basic law enforcement training for ((general authority peace)) officers. (1) ((Unless certification eligibility has been reinstated,)) A peace officer or tribal police officer whose certification ((, commission and/or licensing)) has been revoked((, sanctioned,)) or suspended, or is under review by this state or any other state or territory, is not eligible for a basic law enforcement academy ((certificate, regardless of the officer's prior years of law enforcement service)) diploma.

(2) ((All fully commissioned law enforcement officers of a city, county, or political subdivision of the state of Washington, and officers of the Washington state patrol, unless otherwise exempted by the commission must, as a condition of continued employment, successfully complete a basic law enforcement academy or an equivalent basic academy sponsored or conducted by the commission. Basic law enforcement training must be commenced within the initial six month period of law enforcement employment, unless otherwise extended by the commission.)) As a condition of continued employment, unless exempted by the commission, all peace and tribal officers must commence training in the basic law enforcement academy or the basic law enforcement equivalency academy within the initial six-month period of employment and successfully complete the training.

(3) Law enforcement personnel exempted from the requirement of subsection (2) of this section include commissioned personnel:

- (a) ((Individuals holding the office of sheriff of any county on September 1, 1979; and
- (b) Commissioned personnel:
 - (i) Whose initial date of full time, regular and commissioned law enforcement employment within the state of Washington precedes January 1, 1978;
 - (ii) Who have received a certificate of completion in accordance with the requirement of subsection (2) of this section, and thereafter have engaged in regular and commissioned law enforcement employment without break or interruption in excess of twenty-four months duration; or
 - (iii) Who are employed as tribal police officers in Washington state, natural resource investigators employed by the Washington department of natural resources, special agents employed by the Washington state gambling commission, and liquor enforcement officers employed by the Washington state liquor control board who have received a certificate of successful completion from the basic law enforcement academy or the basic law enforcement equivalency and thereafter engage in regular and commissioned law enforcement employment with that agen

~~ey without break or interruption in excess of twenty four months duration.~~

~~(4) Each law enforcement agency of the state of Washington, or any political subdivision thereof, must immediately notify the commission by approved form of each instance where a commissioned officer begins continuing and regular employment with that agency.~~

~~(5) Failure to comply with any of the above requirements of basic law enforcement training will result in notification of noncompliance by the commission to:~~

- ~~(a) The individual in noncompliance;~~
- ~~(b) The head of his/her agency; and~~

~~(c) Any other agency or individual, as determined by the commission.) Who have met the training requirements in subsection (2) of this section and who have been employed with no break in service in this state for more than 24 months.~~

~~(b) Who have met the training requirements of subsection (2) of this section and within 24 months of completion are employed as a peace or tribal officer with a general authority law enforcement agency. This includes any limited authority personnel as defined in RCW 10.93.020 and in the definitions of this chapter.~~

~~(4) Law enforcement agencies must use an approved form to immediately notify the commission when an officer begins ongoing regular employment with the agency.~~

[Statutory Authority: RCW 43.101.080 and 43.101.200. WSR 19-07-036, § 139-05-200, filed 3/13/19, effective 4/13/19. Statutory Authority: RCW 43.101.080. WSR 06-17-021, § 139-05-200, filed 8/7/06, effective 9/7/06; WSR 05-20-029, § 139-05-200, filed 9/28/05, effective 10/29/05; WSR 03-19-123, § 139-05-200, filed 9/17/03, effective 10/18/03; WSR 00-17-017, § 139-05-200, filed 8/4/00, effective 9/4/00. Statutory Authority: RCW 43.101.080(2). WSR 89-13-024 (Order 14D), § 139-05-200, filed 6/13/89; WSR 87-19-104 (Order 14-D), § 139-05-200, filed 9/18/87; WSR 86-19-021 (Order 1-B), § 139-05-200, filed 9/10/86.]

AMENDATORY SECTION (Amending WSR 14-01-044, filed 12/11/13, effective 1/11/14)

WAC 139-05-210 ((Basic law enforcement)) Certificate of equivalency. (1) ((A peacee)) An officer whose certification, commission, ((and/or)) or licensing has been revoked, sanctioned, suspended, or is under review by this state or any other state or territory is not eligible for a certificate of equivalency, regardless of the officer's prior years of law enforcement service.

(2) A certificate of completion of equivalent basic law enforcement ((training)) academy or corrections officers academy is issued to applicants who successfully complete the equivalency process as required by the commission. For this purpose, the term "process" includes all documentation and prerequisites set forth in subsection ((+6)) (8) of this section and successful completion of all knowledge and skills requirements within the equivalency academy.

(3) Participation in the equivalency process is limited to:

(a) Fully commissioned ((peace officers of a city, county, or political subdivision of the state of)) officers of any Washington ((r))

state agency as defined in RCW 10.93.020 who otherwise are eligible to attend the basic law enforcement academy; ((or))

(b) Fully commissioned ((peace officers who have attained commissioned law enforcement status by completing a basic training program in this or another state. For this purpose, the term "basic training program" does not include any military or reserve training program or any federal training program not otherwise approved by the commission; or

((e))) officers who have been certified by completing a basic training program in Washington or another state;

((c) Corrections officers who are regular, full-time custody and case management employees of publicly funded agencies within Washington who otherwise are eligible to attend the corrections officers academy;

((d) Corrections officers who have attained certification through successful completion of an accepted corrections officers academy in Washington or another state;

((e) Persons who have not attained commissioned ((peace)) officer status but have successfully completed a basic law enforcement academy recognized as ((a full)) fully equivalent to ((the)) Washington's ((state)) basic law enforcement academy by the commission and within ((twelve)) 12 months of the date of completion ((been made)) has received a conditional offer of employment as a fully commissioned ((peace)) officer in Washington state; ((or)) and

((d) Persons whose peace officer)) ((f) Officers whose certification, commission, ((and/or)) or licensing has lapsed because of a break in service ((as a full-time, fully commissioned peace officer in this)) in Washington or any other state or territory for more than ((twenty-four)) 24 months but less than ((sixty)) 60 months ((and who are required to attend the equivalency)).

(4) For the purposes of this section, the term "basic training program" does not include any military or reserve training or any federal training program not otherwise approved by the commission.

(5) Applicants who ((are required to)) must participate in the equivalency academy ((for the purpose of becoming)) to become a certified ((peace)) officer must attend the first available session ((of the equivalency academy)) as a condition of certification ((as a peace officer. Applicants approved to participate in the equivalency academy for training purposes only, will be admitted on a space available basis)).

(6) It is the responsibility of ((the)) an applicant's agency to ensure that all necessary backgrounding forms and documentation are completed and submitted to the commission in a timely manner ((, and as necessary, to ensure that the participation provided by this section is affected)) and all requirements within this section are met.

((5)) (7) The decision to request an officer's participation in the equivalency process is ((discretionary with)) at the discretion of the ((head)) sheriff or chief of the officer's employing agency ((,)) who must advise the commission of that decision ((by appropriate notation upon)) on the hiring notification form. Upon receipt of such notification, the commission will provide all necessary forms and information.

((6)) (8) Upon approval of an applicant's eligibility to participate in the equivalency process, the applicant's employing agency must submit to the commission the following documentation as a ((pre-condition of participation within such)) condition of participating in the equivalency process:

- (a) A statement of the applicant's health and physical condition (by an examining physician));
- (b) A record of the applicant's firearms qualification;
- (c) A liability release agreement by the applicant; ((and))
- (d) ((A criminal records check regarding such applicant.))
- (7) If comparable emergency vehicle operations training) Previous employment agencies with dates of employment;
- (e) Documentation of completion of the previous training program;
- (f) Written syllabus detailing specific areas of training and hours of training;
- (g) Documentation of current certification status; and
- (h) For peace and tribal officers, verification of comparable emergency vehicle operations training (EVOC).

If this has not been completed previously, the applicant ((will be required to)) must complete the commission's current basic law enforcement ((academy emergency vehicle operation course)) EVOC, as scheduled by the commission; all costs associated with this training will be the responsibility of the law enforcement agency.

((8)) (9) Upon completion of the equivalency process and review and evaluation of the applicant's performance, the commission ((will: (a))) shall issue a certificate of completion ((of equivalent basic law enforcement training; or

((b))) and a certificate of certification.

(10) If the officer has not met the qualifications to satisfactorily complete the equivalency academy, the commission shall:

(a) Issue a certificate of completion ((of equivalent basic law enforcement training upon the applicant's successful completion of additional training as the commission may require; or

((c) Require completion of the commission's)) and certificate of certification upon satisfactory completion of any required additional training; or

(b) Require the officer to attend the basic law enforcement academy.

[Statutory Authority: RCW 43.101.080. WSR 14-01-044, § 139-05-210, filed 12/11/13, effective 1/11/14. Statutory Authority: RCW 43.101.080 and [43.101].085. WSR 08-20-010, § 139-05-210, filed 9/18/08, effective 10/19/08. Statutory Authority: RCW 43.101.080. WSR 05-20-029, § 139-05-210, filed 9/28/05, effective 10/29/05; WSR 04-13-070, § 139-05-210, filed 6/15/04, effective 7/16/04; WSR 03-07-099, § 139-05-210, filed 3/19/03, effective 4/19/03; WSR 00-17-017, § 139-05-210, filed 8/4/00, effective 9/4/00. Statutory Authority: RCW 43.101.080(2). WSR 86-19-021 (Order 1-B), § 139-05-210, filed 9/10/86.]

AMENDATORY SECTION (Amending WSR 14-01-045, filed 12/11/13, effective 1/11/14)

WAC 139-05-241 Sponsored reserve officer requirements for basic law enforcement academy training. (1) A law enforcement agency may sponsor a reserve officer, as defined by WAC 139-05-810, as an applicant for the basic law enforcement ((training)) academy.

(2) The commission has sole discretion to admit or deny admittance to the basic law enforcement academy. Priority for admittance to

the basic law enforcement academy shall be given to applicants currently employed as fully commissioned ((law enforcement)) officers.

(3) Reserve officer applicants who are admitted to the basic law enforcement academy are responsible for the full cost of attendance ((at the basic law enforcement academy,)) including payment for room and board if ((room and board are requested by the applicant)) needed. Full payment for attendance at the basic law enforcement academy must be paid in advance ((as a condition of attendance)) and is nonrefundable.

(4) Reserve officer applicants must provide proof of agency labor and industries coverage or adequate medical insurance coverage as a condition of admission to the basic law enforcement academy. Such applicants must maintain said medical insurance throughout the duration of the academy((r)) and must immediately notify the commission in the event that medical insurance terminates, changes, or coverage and liability under the policy is substantially changed. The commission has sole discretion to determine what constitutes adequate medical insurance coverage for attendance at the basic law enforcement academy.

(5) Reserve officer applicants must satisfy all other requirements for admittance to and continued participation in the basic law enforcement academy((r)) to include those requirements set forth in WAC 139-05-220, 139-05-230, and 139-05-240.

(6) Reserve officers are not eligible for peace officer or tribal police officer certification.

[Statutory Authority: RCW 43.101.080. WSR 14-01-045, § 139-05-241, filed 12/11/13, effective 1/11/14.]

AMENDATORY SECTION (Amending WSR 18-13-057, filed 6/14/18, effective 7/15/18)

WAC 139-05-300 Requirement for in-service training. The commission recognizes that continuing education and training is the cornerstone for a successful career as a peace officer in providing competent public safety services to the communities of Washington state.

(1) ((Effective January 1, 2006,)) Every peace or tribal officer certified under RCW 43.101.095 or 43.101.157 will complete a minimum of ((twenty four)) 24 hours of in-service training annually.

(a) ((This requirement is effective January 1, 2006, for incumbent officers.

((b))) The in-service training requirement for each newly hired officer must begin on January 1st of the calendar year following their certification as a result of successful completion of the basic law enforcement academy, equivalency academy, or approved waiver as provided by WAC 139-03-030.

((e))) (b) Training may be developed and provided by the employer or other training resources.

((d))) (c) The commission will publish guidelines for approved in-service training.

((e)) As of July 1, 2018, the twenty four)) (d) The 24 hours must include the successful completion of the ((training)) commission's ((two-hour)) annual online crisis intervention course prescribed under RCW 43.101.427.

(2) ((Effective January 1, 2016,)) Every reserve peace officer as defined by WAC 139-05-810 will complete a minimum of ((twenty-four)) 24 hours of in-service training annually.

(a) The in-service training requirement for each newly appointed reserve ((peace officer/tribal)) peace officer must begin on January 1st of the calendar year following their appointment as a result of successful completion of the basic ((reserve)) law enforcement academy, basic reserve academy equivalency process, or approved waiver as provided by WAC 139-03-030.

(b) Training may be developed and provided by the employer or other training resources.

(c) The commission will publish guidelines for approved in-service training.

(d) As of July 1, 2018, the ((twenty-four)) 24 hours must include the successful completion of the ((training)) commission's ((two-hour)) annual online crisis intervention course prescribed under RCW 43.101.427.

(3) All records for training required for this rule must be maintained by the employing agency and be available for review upon request by an authorized commission representative.

(a) The commission will maintain records of successfully completed commission-registered courses.

(b) Upon request, the commission will furnish a recordkeeping template for use by agencies to track training.

(4) The sheriff or chief of an agency may request an extension of three months for ((peeee)) officers in their employ by notification in writing to the commission, identifying those specific officers.

(a) A sheriff or chief may request a three-month personal extension of the requirement by doing so in writing to the commission.

(b) Written requests submitted under the provision of this subsection must be received by December 1st of the calendar year in question.

(c) The three-month extension under this provision provides the individuals named until March 31st to complete the mandated ((twenty-four)) 24 hours.

(d) Any training obtained during this three-month extension only counts towards the previous year being audited.

(5) The commission auditor may, on a case-by-case basis, grant exceptions for individuals with extenuating circumstances where the employing agency has made every reasonable effort to obtain training for the officer.

[Statutory Authority: RCW 43.101.080 and 2018 c 32. WSR 18-13-057, § 139-05-300, filed 6/14/18, effective 7/15/18. Statutory Authority: RCW 43.101.080. WSR 16-19-040, § 139-05-300, filed 9/14/16, effective 10/15/16; WSR 15-19-042, § 139-05-300, filed 9/10/15, effective 10/11/15; WSR 09-16-098, § 139-05-300, filed 8/4/09, effective 9/4/09; WSR 05-20-029, § 139-05-300, filed 9/28/05, effective 10/29/05; WSR 05-01-112, § 139-05-300, filed 12/15/04, effective 1/15/05.]

NEW SECTION

WAC 139-05-911 Tribal certification. Tribal governments may voluntarily request certification for their police officers.

(1) Tribal governments requesting certification for their police officers must enter into a written agreement with the commission.

(2) The agreement must require the tribal law enforcement agency and its officers to comply with all certification requirements as those requirements are applied to all other officers certified under this chapter and the policy of the commission.

(3) To ensure clarity regarding the requirements with which the tribal government and its police officers must comply should the tribal government request certification, a tribal government may first request consultation with the commission.

(4) Applicants for certification as tribal police officers shall meet the requirements of this chapter and the policy of the commission as those requirements are applied to certification of all officers. Application for certification as a tribal police officer shall be accepted and processed in the same manner as those for certification of all officers.

[]

AMENDATORY SECTION (Amending WSR 17-10-055, filed 5/2/17, effective 6/2/17)

~~WAC 139-05-915 ((Requirements of training for law enforcement and corrections dog handlers and certification of canine teams.)) Canines—Training and certification.~~ (1) Canine teams working in the state of Washington shall be certified to the adopted standards as set by ~~((criminal justice training commission (CJTC)))~~ commission policy.

(a) The standards shall be maintained by ~~the~~ commission ~~((staff))~~ and readily available to ~~((stakeholders))~~ ~~the public~~.

(b) These standards include the minimum performance standards for canine teams performing specific law enforcement or corrections functions.

(c) As a condition of certification, each handler must ensure that the canine performs to a level that is deemed acceptable by the commission in the category for ~~((the))~~ a team's intended use.

(2) An evaluator shall be ~~((a person who is recognized and))~~ appointed by the ~~((CJTC))~~ commission to perform the testing of the canine teams.

(a) The qualifications to become an evaluator ~~((relating to))~~ for canine certification shall be outlined in the evaluation policy adopted by the ~~((CJTC))~~ commission.

(b) In evaluating the proficiency of ~~((the))~~ a canine team, evaluators shall use the standards approved by the commission for that particular discipline.

(c) Each certification issued pursuant to these rules will remain valid as set forth in ~~((CJTC))~~ commission policy, as long as the composition and responsibility of the canine team does not change.

(d) A canine team's certification shall automatically expire if the specific handler and canine, originally paired at the time of certification~~((,))~~ cease to perform canine team functions together or if the function for which the team was certified changes.

(3) This process is not related to ~~((, nor does it have any effect upon,))~~ and does not change the requirements for ~~((peacee))~~ officer certification.

(4) Nothing in these rules is intended to limit the use of canine teams employed by other state or federal agencies for law enforcement purposes, or the use of volunteer canine teams where the handler is not a Washington ((~~peace officer or corrections~~)) officer.

(5) Certified canine teams should have the knowledge and ability to comply with the canine model policy established on December 28, 2021, pursuant to section 3, chapter 320, Laws of 2021. This model policy provides the following:

(a) Canine certification training requirements - Set forth in the commission canine training policy;

(b) Considerations of canine deployment;

(c) Appropriate canine deployment;

(d) Strategies for minimizing law enforcement canine bites;

(e) Circumstances where a canine handler should consider the use of tactics other than deploying a canine;

(f) Prohibited use of a police canine;

(g) Use of canines to apprehend suspects;

(h) Agency canine team reporting protocols;

(i) Circumstances that would warrant the decertification of canine teams; and

(j) Circumstances where the use of voluntary canines and canine handlers may be appropriate.

(6) To report a use of force as outlined in the canine model policy, canine teams should follow the guidelines set forth in WAC 139-06-025.

[Statutory Authority: RCW 43.101.080. WSR 17-10-055, § 139-05-915, filed 5/2/17, effective 6/2/17; WSR 17-01-059, § 139-05-915, filed 12/14/16, effective 1/14/17; WSR 05-20-029, § 139-05-915, filed 9/28/05, effective 10/29/05; WSR 05-01-114, § 139-05-915, filed 12/15/04, effective 1/15/05; WSR 03-07-100, § 139-05-915, filed 3/19/03, effective 4/19/03; WSR 00-17-017, § 139-05-915, filed 8/4/00, effective 9/4/00. Statutory Authority: RCW 43.101.080(2). WSR 86-19-021 (Order 1-B), § 139-05-915, filed 9/10/86.]

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 139-05-912

Requirement of training for state fire marshals.

OTS-3682.2

Chapter 139-06 WAC

((CERTIFICATION, DENIAL, REVOCATION, INVESTIGATION, COMMENCEMENT OF ACTION)) CERTIFICATION—NOTICES, INVESTIGATIONS, HEARINGS, AND ACTIONS

AMENDATORY SECTION (Amending WSR 03-02-010, filed 12/20/02, effective 1/20/03)

WAC 139-06-010 Certification. (1) ((Effective January 1, 2002, all Washington peace)) All officers shall ((be required to)) submit a signed ((peace)) officer certification form to the commission((, which shall serve as an official)) to officially request ((for)) certification as ((a peace)) an officer in Washington state. The form shall be submitted to the commission by the ((peace)) officer ((at such time as)) once the ((peace)) officer has met ((the)) all requirements ((for certification contained in RCW 43.101.095, and shall certify that the peace officer has met such requirements)).

(a) Responsibility for the review and acceptance of an applicant's psychological background, polygraph, and other background materials lies with the hiring agency.

(b) The commission shall issue a certificate ((of peace officer certification)) upon verification that ((the peace)) an officer is eligible for certification.

(2) ((A peace officer who has satisfied, or has been exempted from, the basic training requirements of RCW 43.101.200, prior to January 1, 2002, but who was not employed as a commissioned peace officer on January 1, 2002, and has not had a break of more than twenty-four consecutive months of law enforcement service, shall upon his or her return to employment submit a peace officer certification form to the commission as described in subsection (1) of this section. The commission shall issue a certificate of peace officer certification upon verification that the peace officer is eligible for certification. If the peace officer's break in law enforcement service was more than twenty-four consecutive months, the peace officer must comply with the training requirements of WAC 139-05-200. The commission shall determine under chapter 43.101 RCW and rules of the commission whether the peace officer is eligible for certification and, if so, it shall determine any requirements that the peace officer must meet as a condition of certification.

(3)) The commission shall allow an officer to retain status as a certified officer provided that the officer:

(a) Timely meets basic training requirements or is exempted in whole or in part under RCW 43.101.200 or 43.101.220, or under policies of the commission;

(b) Has not had a break of more than 24 consecutive months of service;

(c) Is not denied certification by the commission under this chapter; and

(d) Has not had certification suspended or revoked by the commission.

(3) Following a break in service and timely meeting the basic training requirements, an officer shall, upon return to service, submit an officer certification form to the commission as described in subsection (1) of this section.

(a) The commission shall issue a certificate of officer certification upon verification that the officer is eligible for certification.

(b) If an officer's break in service is less than 24 months and the officer's certification remains in good standing, no additional training is required.

(c) If an officer's break in service was more than 24 consecutive months and less than 60 months and the officer's certification is in

good standing, the officer must comply with commission training requirements per WAC 139-05-200 and 139-05-210.

(d) If an officer's break in service is over 60 months and the officer's certification is in good standing, the officer must attend the basic law enforcement academy or the corrections officer academy. An officer may also request a variance per WAC 139-05-940.

(4) A certification granted based on an administrative exemption under WAC 139-05-200 shall remain in effect for the duration of the exemption. However, such certification is subject to the requirements of RCW 43.101.105.

((4)) (5) Upon determination that a certification form contains missing or ((deficient)) erroneous information, the commission ((staff)) shall notify the ((peace)) officer and the ((peace)) officer's employing agency ((for purposes of this chapter, "peace officer's employing agency" shall mean the law enforcement agency of termination and/or current employing law enforcement agency) of such and the peace)) and the officer must submit the ((missing or deficient)) correct information to the commission within ((thirty)) 30 days of the date the request is issued. Failure to submit the ((missing or deficient)) correct information within the required time shall result in a recommendation ((that)) to deny the ((peace)) officer's request for certification ((be denied)).

((4)) (6) In order to determine ((a peace)) an officer's eligibility for certification, the commission ((staff)) may request records and information in addition to that provided on the ((peace)) officer certification form. The ((peace)) officer or the ((peace)) officer's employing agency shall submit the requested records and information within ((thirty)) 30 days of the date the request is issued. Failure to comply with the commission's request shall result in a recommendation ((that)) to deny the ((peace)) officer's request for certification ((be denied)).

[Statutory Authority: RCW 43.101.080. WSR 03-02-010, § 139-06-010, filed 12/20/02, effective 1/20/03.]

AMENDATORY SECTION (Amending WSR 03-02-010, filed 12/20/02, effective 1/20/03)

WAC 139-06-020 ((Notification of termination.)) Agency reporting requirements—Force, separation, and investigation. ((1) Each law enforcement agency of the state of Washington or any political subdivision thereof who employs peace officers shall notify the commission by approved personnel action report form when a peace officer terminates employment with that agency for any reason. Such notification must be made within fifteen days of the termination becoming final.

((2) The agency shall, upon request by the commission, provide any additional documentation, files or information, as the commission may deem necessary to determine whether the termination provides grounds for revocation or denial of the peace officer's certification.)

((1) Within 15 days the employing agency of a certified officer shall use an approved form to notify the commission of the following occurrences:

((a) When an officer is separated from the agency for any reason;

(b) When the agency first learns of a use of force by an officer, including canine bites, that caused serious injury or death;

(c) When the agency first learns that an officer has been charged with a crime. An employing agency shall have written policies that require an officer to immediately report any pending criminal charges and any conviction, plea, or other case disposition to their agency; and

(d) When the agency makes an initial disciplinary decision for alleged misconduct by an officer that is noncriminal and may constitute misconduct within RCW 43.101.105.

(2) An employing agency shall provide timely updates to the commission on the status of a reported internal investigation until the investigation concludes.

(3) If the employing agency accepts an officer's resignation or retirement in lieu of termination, the employing agency shall report the reasons and rationale in the information provided to the commission including the findings from any internal or external investigations into alleged misconduct.

(4) If the totality of the circumstances supports a conclusion that an officer resigned or retired in anticipation of discipline, the employing agency shall conduct and complete an internal investigation and provide all relevant information to the commission as it would if the officer were still employed by the agency, regardless of whether the misconduct was discovered at the time:

(a) When such discipline if carried forward would more likely than not have led to discharge; or

(b) If the officer was laid off when disciplinary investigation or action was imminent or pending which could have resulted in the officer's suspension or discharge.

(5) Within 15 days of the conclusion of its internal investigation, the agency shall provide the commission with a summary of findings.

(a) If sustained misconduct results in separation a commission separation form is also required.

(b) The commission will review the separation form and may request investigative files for review of certification misconduct.

(6) The agency shall, upon request by the commission, provide any records and information the commission deems necessary to determine whether the officer committed misconduct that falls within RCW 43.101.105.

(7) In addition to disciplinary action authorized in RCW 43.101.105, the commission may impose a civil penalty not to exceed \$10,000 for the failure by an officer or an employing agency to timely and accurately report information pursuant to this section.

(8) Pursuant to RCW 43.101.135(7) an employing agency may not enter into any agreement or contract with an officer or labor union that:

(a) Agrees not to report conduct, or to delay reporting, or to preclude disclosure of any relevant information to the commission, including any promise not to inform the commission that an officer may have committed misconduct in exchange for allowing that officer to resign or retire or for any other reason; or

(b) Allows the agency to destroy or remove any personnel record while the officer is employed and for 10 years thereafter. Such records must include all misconduct and equal employment opportunity complaints, progressive discipline imposed including written reprimands, supervisor coaching, suspensions, involuntary transfers, inves-

tigatory files, and any other disciplinary appeals and litigation records.

[Statutory Authority: RCW 43.101.080. WSR 03-02-010, § 139-06-020, filed 12/20/02, effective 1/20/03.]

AMENDATORY SECTION (Amending WSR 03-02-010, filed 12/20/02, effective 1/20/03)

WAC 139-06-030 Investigative ((cooperation)) authority—Duty to cooperate. ((All agencies)) (1) An agency shall cooperate in any investigation conducted by the commission regarding ((a peeee)) an officer's certification status. This includes providing records and information when requested.

(a) Upon receipt of a request an agency has 30 days to provide requested records.

(b) If the totality of the circumstances supports a conclusion that an officer resigned or retired in anticipation of discipline, then the employing agency shall conduct and complete an investigation and provide all relevant information to the commission as if the officer were still employed by the agency under RCW 43.101.135.

(2) An officer must authorize the release of their personnel file to the employing agency and the commission including disciplinary, termination, civil or criminal investigation, and other records and information directly related to a certification before the commission under RCW 43.101.095 and 43.101.105.

(3) Requests from the commission for records do not constitute a public record request and are not subject to any waiting periods or timelines associated with the Public Records Act, chapter 42.56 RCW.

(4) An officer must also consent to and facilitate a review of the officer's social media accounts when relevant to an investigation brought before the commission pursuant to RCW 43.101.095(4).

(a) The officer is not required to provide login information pursuant to RCW 49.44.200.

(b) The release of records and information may not be delayed, limited, or precluded by any agreement or contract between the officer or the officer's union and the entity responsible for the records and information.

(5) An employing agency may not enter into any agreement or contract with an officer or union that:

(a) Agrees not to report conduct or to delay reporting or to preclude disclosure of any relevant records and information to the commission, including any promise not to inform the commission that the officer may have committed misconduct in exchange for allowing an officer to resign or retire or for any other reason; or

(b) Allows the agency to destroy or remove any personnel record while the officer is employed and for 10 years thereafter. Such records must include all misconduct and equal employment opportunity complaints, progressive discipline imposed including written reprimands, supervisor coaching, suspensions, involuntary transfers, investigatory files, and other disciplinary appeals and litigation records.

[Statutory Authority: RCW 43.101.080. WSR 03-02-010, § 139-06-030, filed 12/20/02, effective 1/20/03.]

AMENDATORY SECTION (Amending WSR 03-02-010, filed 12/20/02, effective 1/20/03)

WAC 139-06-040 Investigation((, probable cause—Commencement of proceedings)) and appeal—Procedures for misconduct. (1) ((Upon request by a peace officer's employing agency, on its own initiative, or upon the filing of a complaint, on an approved form, by a law enforcement officer or duly authorized representative of a law enforcement agency, the commission may commence an investigation to determine whether there is probable cause to believe that a peace officer's certification should be denied or revoked under RCW 43.101.105.

((2))) The commission may investigate to determine whether there is preponderance of the evidence to believe an officer's certification should be revoked or suspended. Investigations may commence on the commission's own initiative under RCW 43.101.105, or upon receiving a complaint or request from any member of the public including law enforcement or corrections agencies and officers.

((2)) The commission may conduct its investigation either concurrently or consecutively to any internal investigation conducted by the employing agency.

((3)) The commission may initiate the hearings process by preparing a statement of charges regardless of the status or posture of any internal disciplinary action by the employing agency.

((4)) Upon a determination by the commission that there is a preponderance of the evidence to believe that an officer's certification should be revoked or suspended, the commission shall prepare a statement of charges and commence proceedings under RCW 43.101.155.

((5)) Upon a determination by the commission ((staff)) that there is not ((probable cause)) preponderance of the evidence to revoke or deny ((a peace)) an officer's certification, a copy of the decision not to proceed, with a brief statement of the reasons for the decision, shall be furnished to the ((peace)) officer's employing agency((r)) and the complainant, if any. ((A peacee))

((6)) An officer's employing agency, or the complainant, if any, may request a review by the ((chair)) executive director of the commission, or ((his or her)) their designee, of a determination that there is not ((probable cause)) preponderance of the evidence to revoke or ((deny a peace)) suspend an officer's certification, by making such request in writing within ((fourteen)) 14 days of the ((mailing)) receipt of written notification of the decision not to proceed.

((7)) Upon a determination by the commission that there is probable cause to believe that the peace officer's certification should be revoked or denied, the commission shall prepare a statement of charges and commence revocation proceedings under RCW 43.101.155.

((8)) Any designee of the chair under this section must be a member of the commission. ((7)) The commission's final order is subject to the judicial review provisions of the Administrative Procedure Act, RCW 34.05.510 through 34.05.598.

((9)) The commission shall maintain all records obtained during an investigation in a permanent file in accordance with the retention schedule provided in RCW 43.101.400.

[Statutory Authority: RCW 43.101.080. WSR 03-02-010, § 139-06-040, filed 12/20/02, effective 1/20/03.]

AMENDATORY SECTION (Amending WSR 03-02-010, filed 12/20/02, effective 1/20/03)

WAC 139-06-050 ((Notification Request for hearing Default.))

Statement of charges and notification for hearing. (1) The commission ((staff)) shall prepare a statement of charges ((, stating)) providing the grounds for denial or revocation of the ((peace)) officer's certification under RCW 43.101.105.

(a) The statement of charges shall ((be accompanied by)) include a notice ((that)) informing the ((peace)) officer ((is)) that they are entitled to a hearing on the denial or revocation of their certification and the steps to request a hearing.

(b) The notice ((shall include the steps the peace officer must take to request a hearing. The notice)) and statement of charges shall be sent to the ((peace)) officer and ((a copy)) to the ((peace officer's employing)) agency that employed the officer at the time of the alleged misconduct. If the officer is employed by a different law enforcement agency at the time the statement of charges is issued, that agency shall also be sent a copy of the statement of charges.

(2) A request for a hearing on the ((denial)) potential suspension or revocation of certification must be made by the ((peace)) officer on an approved form and received by the commission within ((sixty)) 60 days from the date of ((the mailing of)) sending the statement of charges.

(a) If a hearing is requested, the officer must provide an email address that constitutes the officer's legal address for purposes of any subsequent communication from the commission.

(b) If a hearing is requested, the first prehearing conference shall be held within 14 days of receipt of the hearing request form. The hearing shall occur within 90 days of the first prehearing conference.

(c) Any date related to the hearing schedule including, but not limited to, the dates of prehearing and status conferences, due dates for pleadings, briefings, and exhibits and the date of the hearing itself may be extended upon mutual agreement of the parties or for good cause.

(3) Failure by an officer to request a hearing within 60 days of sending of the statement of charges, or failure by the officer or their counsel to appear at a requested hearing or ((at a)) any prehearing or status conference, shall constitute default. In such circumstances, the commission shall enter an order of default and ((the hearing panel shall enter a)) final order under RCW 34.05.440.

(4) ((A peacee)) An officer may waive the right to a hearing ((by so indicating on the hearing request)) on an approved form. By waiving the right to a hearing, the ((peacee)) officer acknowledges that ((his or her)) their certification ((should be denied or revoked and the hearings panel shall enter such an)) will be subject to discipline as deemed appropriate by the commission and that the commission shall enter a final order.

[Statutory Authority: RCW 43.101.080. WSR 03-02-010, § 139-06-050, filed 12/20/02, effective 1/20/03.]

HEARING AND OUTCOMES

AMENDATORY SECTION (Amending WSR 03-02-010, filed 12/20/02, effective 1/20/03)

WAC 139-06-060 Hearing panels. (1) The commission shall ((establish)) cultivate a list of ((eligible)) qualified individuals to be appointed as members of ((the)) hearing panels in certification actions.

(a) Names of qualified individuals interested in serving as panel members under RCW 43.101.380 may be submitted ((for consideration from law enforcement agencies, law enforcement organizations representing management or labor, from institutions of higher learning, and from eligible individuals interested in serving as panel members. Staff shall review applications and submit a list of eligible individuals to the commission. The commission shall have sole discretion over the selection of panel members.

(2) A new panel may, but need not, be established for each hearing.

(3) Each hearing panel shall select a presiding member who shall be responsible for signing documents on behalf of the panel, and for conducting prehearing conferences and any other hearings that may be necessary. If a panel hears more than one hearing, a new presiding member may, but need not, be selected for each hearing.)) by any person for consideration by the commission. The commission will establish desired qualifications in policy.

(b) With the exception of appointed members of the commission, interested individuals shall submit the:

- (i) Hearing panel member application;
- (ii) Cover letter;
- (iii) Resume;

(iv) The names and contact information for three references; and
(v) Letter of support from their agency supervisor or administrator. Members of the public may submit a letter of recommendation in lieu of a letter of support.

(c) Materials shall be submitted to the commission's hearing coordinator at the following address: 19010 1st Avenue South, Burien, Washington 98148. Materials may also be submitted via email, as identified on the commission website.

(2) The commission shall review applications and submit a list of qualified individuals to the commission. The commission shall have sole discretion over the selection of panel members.

(3) Prior to the hearings panel being selected for a hearing, the commission will confirm with panelists that they have no conflicts of interest as outlined in the hearing panel member handbook. Examples of conflicts of interest include, but are not limited to, the below situations:

- (a) Personal, working, and financial relationships, past or present; and
- (b) Shared affiliations in groups, organizations, and activities.

(4) If a panel member is concerned that they have a conflict of interest, including a relationship with a party or a witness that would prevent the panel member from judging the case fairly, they must notify the commission as soon as possible. If the petitioner or respondent has any motion for disqualification of a panel member, the motion must be filed prior to the first prehearing conference.

(5) In all hearings requested under RCW 43.101.155, an administrative law judge (ALJ) appointed under chapter 34.12 RCW shall preside. The ALJ makes necessary rulings and issues a proposed recommendation but is not entitled to vote.

(6) When a hearing is requested in relation to a certification action of a Washington peace officer, the commission shall appoint to the panel:

(a) One police chief or sheriff from an agency, who is not a current or past employer of the officer;

(b) One certified Washington officer who is at or below the level of first line supervisor and who has at least 10 years' experience as an officer;

(c) One civilian member of the commission as appointed under RCW 43.101.030 (1)(f) and (h) through (j);

(d) One member of the public who is not a prosecutor, defense attorney, judge, or officer; and

(e) One person with expertise and background in police accountability who is not a current or former officer.

(7) When a hearing is requested in relation to a certification action of a Washington corrections officer, the commission shall appoint to the panel:

(a) A person who heads either a city or county corrections agency or facility or of a Washington state department of corrections facility;

(b) One corrections officer who is at or below the level of first line supervisor and who has at least 10 years' experience as a corrections officer;

(c) One civilian member of the commission as appointed under RCW 43.101.030 (1)(f) and (h) through (j);

(d) One member of the public who is not a prosecutor, defense attorney, judge, or officer; and

(e) One person with expertise and background in police accountability who is not a current or former officer.

(8) When a hearing is requested in relation to a certification action of a tribal police officer, the commission shall appoint to the panel:

(a) One tribal police chief;

(b) One tribal police officer who is at or below the level of first line supervisor, and who has at least 10 years' experience as an officer;

(c) One civilian member of the commission as appointed under RCW 43.101.030 (1)(f) and (h) through (j);

(d) One member of the public who is not a prosecutor, defense attorney, judge, or officer; and

(e) One person with expertise and background in police accountability who is not a current or former officer.

[Statutory Authority: RCW 43.101.080. WSR 03-02-010, § 139-06-060, filed 12/20/02, effective 1/20/03.]

AMENDATORY SECTION (Amending WSR 03-02-010, filed 12/20/02, effective 1/20/03)

~~WAC 139-06-070 ((Location of hearings Identification of panel Disqualification.)) Conference and hearings procedures.~~ ((1) Upon receipt of a request for hearing, the hearing panel shall set the date and time of the hearing, and the date and time of a prehearing conference. Hearings will be held at the commission's training facility located at: 19010 1st Avenue South, Burien, Washington, 98148, unless the panel determines otherwise.

((2) Notification of the dates of the hearing and initial prehearing conference shall also contain the names of the members of the hearing panel.

((3) Any motion for disqualification of a panel member must be filed prior to the initial prehearing conference.)) (1) An administrative law judge (ALJ) shall preside over all prehearing conferences, status conferences, and the hearing itself.

(2) The attorney general's office shall represent the commission in all adjudicative proceedings before the commission.

(3) Once the commission hearings coordinator receives the request for hearing, the first prehearing conference shall be held within 14 days unless that time is extended by mutual agreement of the parties or for good cause.

(a) Prior to the first prehearing conference, the parties shall receive timely notice of prehearing conference. The notice will contain the date and time for the first prehearing conference as well as sign-on information and the names of the hearing panel members for the hearing.

(b) Any motion for disqualification of a panel member must be filed prior to the first prehearing conference.

(4) The first prehearing conference is administrative. Its primary purpose is to schedule the hearing date, which must occur within 90 days of the first prehearing conference unless that time is extended on mutual agreement of the parties or for good cause.

(a) During the first prehearing conference, the administrative law judge (ALJ) may schedule due dates for the filing of any prehearing briefs, witness lists, exhibit lists and exchange of exhibits, objections to witnesses and exhibits, and prehearing motions. The ALJ will also schedule a second prehearing conference.

(b) The ALJ shall issue a prehearing conference order within one week of the conclusion of the first prehearing conference. The prehearing conference order shall describe the action taken at the conference and the agreements made by the parties.

(5) The purpose of the second prehearing conference will be to address any objections to the parties' witnesses and exhibits and ascertain the parties' readiness to proceed to hearing. During the second prehearing conference, parties shall be prepared to discuss any remaining matters including any objections to witness or exhibits, and any remaining motions.

(a) The ALJ will make any necessary rulings on motions and objections to witnesses and exhibits.

(b) An order shall be issued by the ALJ within 10 days of the conclusion of the second prehearing conference.

(c) After the second prehearing teleconference, the panel members will be provided with all materials admitted into evidence, as well as all briefing submitted by the parties.

(6) Failure of the officer or the officer's attorney to attend or participate in any scheduled prehearing conference will result in a finding of default and an order will be entered under RCW 34.05.440.

(7) Hearings may be held in person or virtually.

(a) Once the hearing date has been set, a written notice will appear on the commission website with the date, time, and location of the hearing.

(b) Hearings are open to the public and accommodations will be made for public attendance of virtual meetings.

(c) The commission shall create audio or video recordings of all prehearing conferences and hearings.

(8) If an in-person hearing is scheduled, the hearings coordinator will provide an admitted exhibits binder including all admitted exhibits from both parties. The admitted exhibits binder shall be used by both parties to reference or display any admitted exhibits during the hearing. If a virtual hearing is scheduled, the parties shall maintain control of their exhibits and, if necessary, will be required to share their screens when referencing or displaying an admitted exhibit during the proceeding. Parties are forbidden from screen sharing any exhibits or any versions of exhibits not previously admitted.

(9) If an in-person hearing is scheduled, the subject officer must attend the proceeding in person.

(a) In person hearings will be conducted at the training commission located at: 19010 1st Avenue South, Burien, Washington, 98148.

(b) If a virtual hearing is scheduled, the subject officer shall remain visible on screen at all times the parties are on the record. Failure to comply with this attendance requirement shall constitute default and the hearings panel shall enter a final order revoking peace officer certification under RCW 34.05.440.

(10) Regardless of whether a hearing is scheduled in-person or virtually, witnesses may testify at the hearing in-person, by telephone, or virtually.

(11) Failure of the officer or their attorney to attend or participate in the hearing will result in a finding of default and an order will be entered under RCW 34.05.440.

(12) The standard of proof in actions before the commission is a preponderance of the evidence. RCW 43.101.380(1).

[Statutory Authority: RCW 43.101.080. WSR 03-02-010, § 139-06-070, filed 12/20/02, effective 1/20/03.]

AMENDATORY SECTION (Amending WSR 03-02-010, filed 12/20/02, effective 1/20/03)

WAC 139-06-080 Filing of documents for hearings. ((An)) (1) If a hearing is to be conducted in person, an original and five copies of ((all documents, pleadings and other correspondence shall be filed at the commission's training facility located at)) the opening brief, witness list, exhibit list, and exhibits are to be submitted to the commission at: 19010 1st Avenue South, Burien, Washington, 98148((, addressed to the attention of the certification manager, and one copy shall also be served on the opposing party or their attorney, if represented by counsel. Service shall be accomplished in accordance with the superior court civil rules.)) as outlined in the prehearing order.

(a) All hearing documents received by the commission will be shared with the petitioner, respondent, and the administrative law judge (ALJ).

(b) In addition, an electronic copy of each document shall be provided to the commission, the petitioner, the ALJ, and the respondent or their representative. Service shall be accomplished in accordance with the superior court civil rules.

(2) Witness lists must include a statement of the subject matter on which the witness is expected to testify. Failure to include subject matter in such a statement may be grounds for exclusion of testimony regarding that subject matter at the hearing.

(3) The petitioner and respondent should submit a proposed findings of fact and conclusion of law within three days of the conclusion of the hearing.

[Statutory Authority: RCW 43.101.080. WSR 03-02-010, § 139-06-080, filed 12/20/02, effective 1/20/03.]

AMENDATORY SECTION (Amending WSR 03-02-010, filed 12/20/02, effective 1/20/03)

WAC 139-06-100 ((Attendance at hearing Burden of proof.) Outcomes for determinations of misconduct—Suspension, probation, re-training. ((1) The peace officer shall appear in person at the hearing. Failure to appear in person shall constitute default and the hearing panel shall enter an order under RCW 34.05.440.

(2) The standard of proof shall be clear, cogent, and convincing evidence.))

(1) When an applicant or officer is found to have committed misconduct listed under RCW 43.101.105(3), the commission may deny, suspend, or revoke certification, require remedial training, or impose a probationary term. In determining an appropriate action following a finding of misconduct, the hearings panel shall review the following evidence, if admitted:

(a) Information provided by the complainant(s), if any;

(b) The final disposition and all supporting documentation and information submitted to the commission and the basis for the final disposition following an investigation by a law enforcement or corrections agency regarding alleged misconduct;

(c) The final disposition and any documentation submitted to the commission and the basis for the final disposition of any due process hearing or disciplinary appeals hearing provided such hearing has occurred prior to the commission's action;

(d) Any information obtained by the commission through its own investigation or research;

(e) Any discipline or training ordered by the employing agency regarding the alleged misconduct; and

(f) Whether the employing agency bears any responsibility for the situation.

(2) Additional bases for determining appropriate outcomes shall be developed by the commission.

(3) The fact that the commission has suspended an officer's certification is not in and of itself a bar to the employing agency's maintenance of the officer's health and retirement benefits.

(4) Any suspension imposed by the commission shall run concurrently to any leave or discipline imposed by the employing agency for the same incident.

(5) An agency may not terminate an officer based solely on imposition of suspension by the commission.

(6) This subsection does not prohibit a law enforcement agency from terminating an officer based on the underlying acts or omissions for which the commission took such action.

(7) Reserve officers are subject to the same commission actions as officers based on alleged misconduct listed in RCW 43.101.105 (2) and (3).

[Statutory Authority: RCW 43.101.080. WSR 03-02-010, § 139-06-100, filed 12/20/02, effective 1/20/03.]

AMENDATORY SECTION (Amending WSR 03-02-010, filed 12/20/02, effective 1/20/03)

WAC 139-06-110 Final order. ((1) The hearing panel shall enter its final order within ninety days of the conclusion of the hearing, unless the time period is extended for good cause, or waived. A copy of the order shall be sent to the parties, the peace officer's employing agency, and the complainant, if any.

((2) The decision of the hearing panel shall be the final decision of the commission.) (1) The administrative law judge (ALJ) makes necessary rulings and issues a proposed recommendation but is not entitled to vote.

(2) The hearings panel shall enter the final order within 90 days of the conclusion of the hearing. The commission shall serve a copy of the order to the parties and the officer's employing agency. It will also appear on the commission website.

(3) The final order issued by the hearings panel shall be the final decision of the commission.

(4) The transcripts, admitted evidence, recordings, and written decision of the hearings panel on behalf of the commission are not confidential or exempt from public disclosure and are subject to subpoena and discovery proceedings in civil actions.

(5) The commission's final order is subject to the judicial review provisions of the Administrative Procedure Act, RCW 34.05.510 through 34.05.598.

[Statutory Authority: RCW 43.101.080. WSR 03-02-010, § 139-06-110, filed 12/20/02, effective 1/20/03.]

((REINSTATEMENT OF CERTIFICATION))

AMENDATORY SECTION (Amending WSR 03-02-010, filed 12/20/02, effective 1/20/03)

WAC 139-06-130 Standards for readmission to academy, certification after denial, and reinstatement of certification. ((1)(a) A peace officer denied certification based upon dismissal or withdrawal from basic law enforcement academy for any reason not also involving discharge for disqualifying misconduct is eligible for readmission and certification upon meeting the requirements set forth in WAC 139-05-242 (Readmission to basic law enforcement academy). The commission may impose a probationary period upon readmission.

(b) A peace officer denied certification based upon dismissal or withdrawal from basic law enforcement academy for disqualifying misconduct is eligible for readmission and certification only upon meeting the requirements of subsection (4) of this section.

(2) A peace officer whose certification is denied or revoked based upon prior administrative error of issuance is eligible for certification or reinstatement of certification upon a determination by the commission that the factors that should have prevented the peace officer from being certified have been remedied and the peace officer is otherwise eligible for certification.

(3) A peace officer whose certification is denied or revoked based upon failure to cooperate, or interference with an investigation, is eligible for certification or reinstatement of certification if the peace officer's conduct did not also involve disqualifying misconduct, or other illegal or unethical conduct, and upon a showing that the peace officer has thereafter fully cooperated and is otherwise eligible for certification. In making its determination, the commission may consider the nature and seriousness of the peace officer's conduct.

(4) A peace officer whose certification is denied or revoked based upon discharge for disqualifying misconduct, but not also based upon a felony criminal conviction, may, five years after revocation or denial, petition the commission for certification or reinstatement of certification. The commission shall hold a hearing on the petition for certification or reinstatement of certification. The commission may allow certification or reinstatement of certification upon finding that the peace officer has engaged in no further disqualifying or similar misconduct, has had no further criminal convictions, has engaged in no other illegal or unethical conduct, and is otherwise eligible for certification.

(5) A peace officer whose certification is denied or revoked based solely upon a criminal conviction may petition the commission for certification or reinstatement of certification immediately upon final judicial reversal of the conviction. The commission shall hold a hearing on the petition for certification or reinstatement of certification. The commission may allow certification or reinstatement of certification upon finding that the peace officer has engaged in no further disqualifying or similar misconduct, has had no further criminal convictions, has engaged in no other illegal or unethical conduct, and is otherwise eligible for certification.

(6) A peace officer whose certification has been denied or revoked, or whose certification has lapsed, due to a break of more than twenty-four consecutive months of law enforcement service as a peace officer, may upon return to service as a law enforcement officer, petition the commission for certification or reinstatement of certification. Upon receipt of a petition for certification or reinstatement of

~~certification, the commission shall determine if the peace officer is eligible for certification or reinstatement of certification. The terms of certification or reinstatement of certification may be subject to the requirement of basic law enforcement academy or the basic law enforcement equivalency academy in addition to other requirements as imposed by the commission.)~~ (1) A person denied a certification based upon dismissal or withdrawal from a basic academy under RCW 43.101.105 (3)(a) is eligible for readmission and certification upon meeting standards established in the rules of the commission.

(2) A person whose certification is denied or revoked based upon prior administrative error of issuance, failure to cooperate, or interference with an investigation is eligible for certification upon meeting standards established in commission policy per RCW 43.101.115(2).

(3) A person whose certification is mandatorily denied or revoked pursuant to RCW 43.101.105(2) is not eligible for certification at any time.

(4) A person whose certification is denied or revoked for reasons other than provided in subsections (1) through (3) of this section may, five years after the revocation or denial, petition the commission for reinstatement of certification or for eligibility for reinstatement. The commission may hold a hearing on the petition to consider reinstatement, and the commission may allow reinstatement based upon standards established in commission policy. If the certificate is reinstated or eligibility for certification is determined, the commission shall establish a probationary period of certification.

(5) A person whose certification is revoked based solely upon a criminal conviction may petition the commission for reinstatement immediately upon final judicial reversal of the conviction. The commission may hold a hearing on a request to consider reinstatement, and the commission may allow reinstatement based on standards established in commission policy. If the certificate is reinstated or if eligibility for certification is determined, the commission shall establish a probationary period of certification.

(6) A person whose certification has been denied or revoked may petition the commission for certification or reinstatement of certification as such time as they are eligible under RCW 43.101.115 and this section.

(7) The commission's policies and decisions regarding reinstatement shall align with its responsibilities to enhance public trust and confidence in the law enforcement profession and correctional system.

[Statutory Authority: RCW 43.101.080. WSR 03-02-010, § 139-06-130, filed 12/20/02, effective 1/20/03.]

AMENDATORY SECTION (Amending WSR 14-01-046, filed 12/11/13, effective 1/11/14)

WAC 139-06-140 Hearing on petition for eligibility for certification or reinstatement of certification. (1) ~~(The commission may hold a hearing to determine the peace officer's eligibility for certification or reinstatement of certification.)~~

~~(2) Upon receipt of a petition for eligibility for certification or reinstatement of certification, and a determination by commission staff that a hearing is necessary or required, the peace officer and~~

the peace officer's employing agency shall be notified in writing. Where a hearing is not held, the peace officer and the peace officer's employing agency shall be notified in writing of the commission's decision to grant or deny the petition and the reasons for the decision. Where the petition is denied, the peace officer or the peace officer's employing agency may request a hearing before a hearing panel by making such request in writing within fourteen days of the mailing of notification that the petition was denied.

(3)) The commission may hold a hearing to determine an officer's eligibility for certification or reinstatement of certification per RCW 43.101.115.

(a) The commission will review the request and determine whether to hold a hearing based on criteria established in commission policy. The officer and their employing agency shall be notified of the decision in writing and the reasons for the decision, if denied.

(b) Where a petition is denied, the officer or their employing agency may appeal the denial utilizing commission appeal processes within 14 days of receipt of notification that the petition was denied.

(2) Hearings on eligibility for certification or reinstatement of certification shall be conducted by a hearing panel.

(a) The hearing panel as defined in RCW 43.101.380 shall review the certification file and any additional records and information submitted by the parties prior to the hearing and may request any additional records and information ((in order)) to assist in its determination.

(b) The issues shall be limited to whether the ((peace)) officer is eligible for certification, whether certification should be reinstated, and whether ((appropriate)) probationary terms should be imposed as a condition of reinstatement pursuant to WAC 139-06-150.

((4)) (3) The hearing panel shall enter its decision on the petition by written order as soon as possible within ((ninety)) 90 days of the conclusion of the hearing, unless the time ((period)) is extended for good cause((r)) or waived. A copy of the order shall be sent to the parties and to ((the peace officer's)) their employing agency.

((5)) (4) The decision of the hearing panel shall be the final order of the commission.

((6) A peace)) (5) An officer whose petition for eligibility for certification or reinstatement of certification was denied by a hearing panel for reasons other than those outlined in RCW 43.101.115 (1), (2), and (3) may file a subsequent petition after five years have ((elapsed)) lapsed since the date of the entry of the hearing panel's final written order denying the prior petition. If a second petition for reinstatement is denied, no further petitions may be filed. The commission will not consider or accept ((for filing)) a petition for reinstatement submitted after two prior petitions have been denied.

[Statutory Authority: RCW 43.101.080. WSR 14-01-046, § 139-06-140, filed 12/11/13, effective 1/11/14; WSR 03-02-010, § 139-06-140, filed 12/20/02, effective 1/20/03.]

AMENDATORY SECTION (Amending WSR 03-02-010, filed 12/20/02, effective 1/20/03)

WAC 139-06-150 ((Probationary terms on reinstatement.)) Terms of suspension and retraining. ((Upon a determination that a peace officer should be certified or reinstated, the commission may impose a term of probation which may include requirements to ensure that the peace officer has taken positive and substantial steps or actions to reconcile the causes for which the peace officer's certification was denied or revoked. When probation is imposed, the terms shall be furnished in writing to the peace officer and the peace officer's agency. Failure of the peace officer to meet the terms of probation may be grounds for a hearing to determine the status of the peace officer's certification.)) (1) The length and conditions of any suspension of a certification imposed under RCW 43.101.105 will be included in the final order.

(2) Consistent with any conditions included in a final order imposing a suspension of a certification under (1) of this section, the commission may require an officer to take positive and substantial steps including retraining to reconcile the causes for which the hearings panel suspended the officer's certification.

(3) The period of suspension of a certification may be for a specified length of time, conditioned upon the completion of retraining or other requirements specified in the final order, or both. However, the period of a suspension of a certification shall last no longer than one year.

(4) Any retraining imposed in a final order shall comply with a list of approved retraining maintained by the commission.

(5) When such conditions have been satisfactorily met and any mandatory minimum length of time has concluded, the commission shall issue a notice lifting the suspension.

(a) Prior to lifting a suspension, the commission shall ensure that any conditions of a suspension of certification as described in (1) of this section are completed; and

(b) The notice lifting the suspension will be provided to the respondent and the employing agency, if any.

(6) If after one year any conditions included in a final order imposing a suspension of a certification under (1) of this section have not been satisfactorily met, the commission shall seek to revoke the respondent's certification.

[Statutory Authority: RCW 43.101.080. WSR 03-02-010, § 139-06-150, filed 12/20/02, effective 1/20/03.]

AMENDATORY SECTION (Amending WSR 03-02-010, filed 12/20/02, effective 1/20/03)

WAC 139-06-160 Miscellaneous. ((These)) The rules ((are intended to supplement the procedures)) contained in this chapter are intended to supplement the procedures contained in the Administrative Procedure Act, chapter 34.05 RCW, and the model rules of procedure, chapter 10-08 WAC.

(1) In the case of conflict between the ((Administrative Procedure Act, the)) model rules of procedure((,)) and the ((procedural))

rules adopted in this chapter, the ((procedural)) rules adopted in this chapter shall govern.

((Peace)) (2) Officer certification proceedings are distinct from proceedings before the commission under chapter 139-03 WAC and this chapter is not intended to modify chapter 139-03 WAC.

(3) This chapter is not intended to affect standards relating to civil service appeals, to collective bargaining remedies, or to any similar remedies ((for direct review)) of employment actions.

[Statutory Authority: RCW 43.101.080. WSR 03-02-010, § 139-06-160, filed 12/20/02, effective 1/20/03.]

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 139-06-090 Prehearing conferences.

WAC 139-06-120 Petition for reinstatement of certification.

OTS-2602.3

AMENDATORY SECTION (Amending WSR 13-02-060, filed 12/27/12, effective 1/27/13)

WAC 139-07-010 ((Conditions)) Conditional offers of employment.

((As a condition of continuing employment for any applicant who has been offered a conditional offer of employment as a fully commissioned peace officer or a reserve officer, including any person whose certification has lapsed as a result of a break in service of twenty-four consecutive months in the officer's service as a fully commissioned peace officer or reserve officer, the applicant shall submit to a background investigation including a check of criminal history, a psychological examination, and a polygraph or other truth verification assessment as authorized by the county, city, or state law enforcement agency in compliance with the requirements of this chapter.)) (1) Any applicant who has been offered a conditional offer of employment as an officer must submit to a background investigation to determine suitability for employment.

(2) This includes officers whose certification has lapsed as a result of a break in service except those recalled to active military service.

(3) Hiring agencies may not make a nonconditional offer of employment prior to an applicant's completion of the background check.

(a) Hiring agencies shall verify in writing to the commission that they complied with all background check requirements prior to making any final offer of employment; and

(b) Responsibility for all background verification lies with the hiring agency.

(4) Reserve officers shall submit to the same background requirements as officers.

[Statutory Authority: RCW 43.101.080. WSR 13-02-060, § 139-07-010, filed 12/27/12, effective 1/27/13; WSR 10-07-037, § 139-07-010, filed 3/10/10, effective 4/10/10.]

AMENDATORY SECTION (Amending WSR 18-19-066, filed 9/17/18, effective 10/18/18)

WAC 139-07-020 Background information. ((1) Requirements for the applicant.

(a) Personal history statement. The applicant shall complete and submit to the employing agency a personal history statement on a form prescribed by the employer before the start of a background investigation. The personal history statement form shall contain questions and answers which aid in determining whether the person is suitable for employment as a certified peace officer or a reserve officer. The questions shall address whether the applicant meets the minimum requirements for employment, has engaged in conduct or a pattern of conduct which would jeopardize the public trust in the law enforcement profession, and is of good moral character.

(b) Information requirements. To assist with the background investigation, the applicant shall provide the following:

(i) Verification of immigrant or citizenship status as either a citizen of the United States of America or a lawful permanent resident. A copy of any of the following United States government or United States Citizenship Immigration Services documents are acceptable proof: A United States birth certificate, a United States passport, a permanent resident card, a certificate of naturalization, or a certificate of citizenship.

(ii) Proof of education. A certified copy of a diploma, certificate, transcript, or homeschool transcript is acceptable proof.

(iii) Record of any military discharge. A certified copy of the Military Service Record (DD Form 214, Member 4) is acceptable proof.

(iv) Personal references. The names and addresses of at least three people who can provide information as personal references.

(v) Previous employers or school attendees. The names and addresses of all employers and schools attended within the last ten years, at a minimum.

(vi) Residence history. A listing of the complete residential addresses for the last ten years.

(2) Requirements of the agency. At a minimum, the agency shall include the following in its collection and assessment of an applicant's background information, which also includes determining if the information provided by the applicant is accurate and truthful. The agency shall:

(a) Query all the law enforcement agency records in jurisdictions listed in subsection (1)(b)(v) and (vi) of this section;

(b) Query the motor vehicle division driving records from any state listed in subsection (1)(b)(v) and (vi) of this section;

(c) Complete and submit a fingerprint card inventory sheet to the Federal Bureau of Investigation and Washington state patrol records division for query;

~~(d) Query the National Crime Information Center/Interstate Identification Index (NCIC/III) and the Washington Criminal Information Center/Washington State Identification System (WACIC/WASIS) or the equivalent for each state listed in subsection (1)(b)(v) and (vi) of this section;~~

~~(e) Contact a minimum of three references and a reasonable number of previous employers listed in subsection (1)(b)(iv) and (v) of this section and document the answers to inquiries concerning whether the person meets the standards of this section; and~~

~~(f) At the conclusion of all of the requirements of the collection and assessment of an applicant's background information, the agency shall complete a report that attests to all the requirements, including the requirements of WAC 139-05-220.) (1) Hiring agency background checks must include the following records and information for new applicants, including reserve officers:~~

(a) Criminal history;

(b) National decertification indices or data banks;

(c) Commission records including employment history and certification status;

(d) All disciplinary records by any previous law enforcement or correctional employer, including complaints or investigations of misconduct, to include the outcome of any investigation regardless of the result, and the reason for separation from employment. Previous law enforcement or corrections employers must provide this information, including the reason for separation from employment with the agency, within 30 days of receiving a written request from the agency conducting the background check;

(e) Verification from the local prosecuting authority in any jurisdiction in which the applicant has served as to whether the applicant is on any impeachment disclosure lists;

(f) Inquiry into whether the applicant has any past or present affiliations with extremist organizations, as defined in commission policy;

(g) A review of the applicant's social media accounts;

(h) Verification of citizenship status as either a citizen of the United States of America or a lawful permanent resident;

(i) A psychological examination and recommendation administered by a qualified professional pursuant to chapter 18.71 or 18.83 RCW, in compliance with standards established in commission policy per WAC 139-07-030;

(j) A polygraph or equivalent assessment administered by a qualified professional with appropriate training and in compliance with standards established in commission policy per WAC 139-07-040; and

(k) Any basis for disqualification listed under RCW 43.101.105 (2) or (3).

(2) An applicant may be offered employment by more than one agency. The background results may be shared with more than one agency under the following circumstances:

(a) The hiring agency which initiated the background investigation agreed to share the results of the investigation in full with another hiring agency;

(b) The applicant signed a release permitting another hiring agency to have the report;

(c) The background investigation was completed within six months of the request to share records; and

(d) The job analyses of both agencies are substantially similar.

(3) Prior to a potential officer's registration into an academy, the hiring agency shall certify to the commission that the agency has completed the background check, no information has been found that would disqualify the applicant from certification, and the applicant is suitable for employment as an officer.

[Statutory Authority: RCW 43.101.080 and 2018 c 32. WSR 18-19-066, § 139-07-020, filed 9/17/18, effective 10/18/18. Statutory Authority: RCW 43.101.080. WSR 13-02-060, § 139-07-020, filed 12/27/12, effective 1/27/13; WSR 10-07-037, § 139-07-020, filed 3/10/10, effective 4/10/10.]

AMENDATORY SECTION (Amending WSR 13-02-060, filed 12/27/12, effective 1/27/13)

WAC 139-07-030 Psychological examination. (1) The psychological examination shall be administered by a ((("))) qualified professional ((," which means)) who is a psychiatrist licensed in the state of Washington pursuant to chapter 18.71 RCW or a psychologist licensed in the state of Washington pursuant to chapter 18.83 RCW.

(a) ((The qualified professional who administers the examinations should be trained and experienced in psychological testing, test interpretation, psychological assessment techniques, and the administration of psychological examinations specific to peace officer applicants of law enforcement agencies.

((b))) The examiner shall be trained and experienced in psychological testing, test interpretation, psychological examination techniques, and the administration of psychological examinations specific to law enforcement or corrections agencies;

(b) Agencies should confirm with the Washington state department of health that the examiner is in good standing;

(c) If the examiner has less than one year experience in psychological examination for public safety, then they shall be supervised by an examiner with at least two years' experience in psychological examination for public safety;

(d) The examiner shall be trained and knowledgeable in issues regarding discrimination, implicit and explicit bias, and police-community relations;

(e) The examiner shall be trained and knowledgeable in issues of posttraumatic stress and traumatic brain injury;

(f) The examination ((should)) shall be based upon attributes considered most important for effective performance as ((a peace)) an officer ((as obtained)); such attributes may be identified from a job analysis and data provided by the ((law enforcement agency making the conditional offer of employment. The data may include interviews, surveys, or other appropriate sources where job performance information was obtained.

((c))) Psychological examination reports older than six months shall not be considered valid for the purpose of RCW 43.101.080(19) and 43.101.095(2).

((d))) hiring agency. Attributes should include self and emotional regulation, decision making and judgment, conflict management, stress tolerance, dominance vs. passivity, and other interpersonal and psychological characteristics that allow for insight to an individual's potential to adequately perform the essential duties of an officer and

to determine what, if any, risk factors exist in the applicant's profile based on objective examination results; and

(g) The examination report, including all ((testing)) examination materials and documentation used to complete the examination report, ((should)) shall be maintained in a manner consistent with applicable confidentiality, records retention, and public disclosure laws and rules.

(2) ((Through the examination, the qualified professional shall determine the psychological suitability of the peace officer applicant by an assessment of whether he or she is free from job-relevant mental and emotional impairments including, but not limited to, psychopathology, personality disorders, and inappropriate behavior patterns.

((3))) Psychological examination reports older than six months shall be considered invalid for the purpose of RCW 43.101.080(15) and 43.101.095(2).

(3) The examiner shall determine the psychological suitability of the applicant by an examination of whether they are free from job-relevant mental and emotional impairments including, but not limited to, psychopathology, personality disorders, and inappropriate behavior patterns.

(4) The sole purpose of the psychological examination under this chapter is compliance with RCW 43.101.080((+19)) (15) and 43.101.095(2)((+a)) and shall not be used for any other purpose ((by the law enforcement agency or any party)).

((4))) (5) It is the responsibility of the hiring agency to receive and review the results of the psychological exam. The commission does not routinely review these exams but may do so pursuant to RCW 43.101.400.

(6) Prior to the ((administration of the)) examination, the applicant must ((sign an informed)) consent in writing to the conditions of the evaluation. The informed consent should clearly state the ((law enforcement)) hiring agency is the client so that the applicant ((is informed)) knows that the entire examination would be shared with the agency.

((5))) (7) The examination shall include the following:

(a) A minimum of ((two)) three written psychological tests((+
(i) The tests should be)) that are objective, job-related, psychological instruments validated for use in evaluating law enforcement or correctional officers((+));

(i) For the purpose of this section, a validated test is defined as a test that has a substantial research base for interpretation with normal range populations in general and public safety applications in particular;

((ii) ((If mail-order, internet based, or computerized tests are employed, the examiner should verify and interpret individual results;)) Validated tests used must be the most current versions and be consistent with current, objective, and relevant norms; and

((iii) It is the examiner's responsibility to determine what tests can and will be used to make a valid and reliable determination of applicant suitability based on available instruments that include current, objective, and relevant norms to the position in question;

((b) ((A)) At least one comprehensive, face-to-face, clinical interview with the applicant conducted after a complete review of the psychological test results; if a complete review of the psychological test results is not completed prior to the interview, then a second interview shall be conducted;

(c) An interpretation of the psychological test results by the ((qualified professional)) examiner;

(d) An opinion on psychological suitability by the ((qualified professional)) examiner; and

(e) A list and summary of the information relied upon for the ((assessment)) examination.

((+6)) (8) Findings of the psychological examination shall be ((reported in writing to the law enforcement agency requesting the examination.

((7))) shared by the examiner with the hiring agency verbally with an opportunity to ask questions, as well as reported in writing.

(9) The examiner shall provide an opinion regarding the likelihood that an applicant can safely and effectively perform the essential functions of the position. Any risk factors should also be indicated as well. Areas of essential function to evaluate include, but are not limited to:

- (a) Adaptability and flexibility;
- (b) Avoidance or risk-tasking behaviors;
- (c) Conscientiousness and dependability;
- (d) Decision making and judgment;
- (e) Emotional regulation and stress tolerance;
- (f) Impulse control and attention to safety;
- (g) Integrity and ethics;
- (h) Social competence; and
- (i) Teamwork.

(10) The written report shall include the following:

(a) The date of completion and a signature of the ((qualified professional who conducted the examination)) examiner;

(b) Name and date of birth of applicant, position applied for, and agency which made the conditional offer of employment;

(c) A list and summary of the information relied upon for the ((assessment)) examination;

(d) All the components of the examination, as defined in this chapter;

(e) Factors which could affect the reliability and validity of the ((assessment)) examination; and

(f) An ((assessment)) opinion of the psychological suitability of the applicant to be ((a peace officer or reserve)) an officer for the (particular law enforcement)) hiring agency.

((+8)) (11) An applicant may be offered employment by more than one ((law enforcement)) agency that is conditional on the results of a psychological examination.

((+9)) (12) The ((peace officer)) applicant may be required to pay all or a portion of the cost of the examination under RCW 43.101.080((+19)) (15) and 43.101.095(2).

((+10)) (13) One psychological examination may be shared with more than one ((law enforcement)) agency under the following circumstances:

(a) The agency which initiated the psychological examination and the ((qualified professional conducting the examination)) examiner agreed to share the psychological examination report and recommendations with ((the other law enforcement)) another agency;

(b) The applicant signed a release permitting ((the other)) an other agency to have the psychological examination report;

(c) The psychological examination was completed within six months of the request ((by the other law enforcement agency)); and

(d) The job analyses of ((the initiating and other law enforcement)) both agencies ((must be)) are substantially similar.

[Statutory Authority: RCW 43.101.080. WSR 13-02-060, § 139-07-030, filed 12/27/12, effective 1/27/13; WSR 10-07-037, § 139-07-030, filed 3/10/10, effective 4/10/10.]

AMENDATORY SECTION (Amending WSR 13-02-060, filed 12/27/12, effective 1/27/13)

WAC 139-07-040 Polygraph examination or other truth verification assessment. (1) Polygraph assessments provide hiring agencies with insight into an individual's honesty and an opportunity to ask an array of additional background questions.

(2) Standards for polygraph ((and other truth verification)) assessments (.) :

(a) ((Equipment used to conduct truth verification assessments as a part of the preemployment testing for certification of a peace officer or reserve law enforcement officer must meet a standard that has been proved to be valid and reliable by independent research studies other than those done by the manufacturer.

(b) The examiners, analysts, and their techniques for conducting a truth verification assessment must comply with all applicable federal and state laws including, but not limited to, the Employee Polygraph Protection Act, Equal Employment Opportunity Commission, Americans with Disabilities Act, and Washington state law against discrimination.

(c) Truth verification assessments under this chapter are intended as one of the tools for incremental validity to risk assessment and risk management efforts surrounding the evaluation and selection of peace officer and reserve officer applicants.

(d) Preemployment tests and assessments are considered screening devices and are conducted in the absence of a known incident, allegation, or particular reason to suspect someone's involvement. The truth verification assessment questions should be simple, direct, and easily understood by the applicant. Test information and results should be considered confidential within the screening process to be used exclusively by the county, city, or state law enforcement agency to assist with the selection of their applicant.

(2) Polygraph examination.

(a) An experienced polygraph examiner who is a graduate of a polygraph school accredited by the American Polygraph Association (APA) shall conduct the polygraph test. The examiner must also show that he or she is in compliance with completion of a minimum of thirty hours of APA approved continuing education every two calendar years.

(b) Polygraph tests administered under this chapter shall be based on data from existing research pertaining to screening and diagnostic polygraph testing, risk assessment, risk management, and field investigation principles.

(c) The polygraph examiner shall assure that the polygraph equipment is properly functioning, maintained, and calibrated in compliance with the manufacturer's recommendation.

(i) The polygraph examiner shall record a chart semiannually to demonstrate correct functioning and shall be maintained by the examiner for a period of one year.

(ii) At a minimum, a polygraph instrument shall continuously record the following components during the testing process:

- (A) Two pneumograph components to document thoracic and abdominal movement patterns associated with respiration;
- (B) A component to record electro dermal activity reflecting relative changes in the conductance or resistance of current by epidermal tissues;
- (C) A cardiograph component to report pulse rate, pulse amplitude, and relative blood pressure changes; and
- (D) A motion sensor.

(d) The county, city, or state law enforcement agency which authorized the polygraph test shall maintain all documentation of the test for a minimum of three years from the date of the test unless otherwise required by law.)) Examiners must have graduated from a polygraph school accredited by the American Polygraph Association (APA) and belong to the Northwest Polygraph Association or an association with equivalent standards for membership. The examiner must also show that they are in compliance with completion of a minimum of 30 hours of APA-approved continuing education every two calendar years;

(b) Polygraph equipment used as a part of the preemployment assessment must meet a standard that has been proved to be valid and reliable by independent research studies other than those done by the manufacturer;

(c) Techniques for conducting a polygraph must meet industry standards and comply with all applicable federal and state laws including, but not limited to, the Employee Polygraph Protection Act, Equal Employment Opportunity Commission, Americans with Disabilities Act, and Washington state law against discrimination;

(d) Preemployment assessments are considered screening devices and are conducted in the absence of a known incident, allegation, or particular reason to suspect someone's involvement; and

(e) Assessment information and results should be considered confidential within the screening process to be used exclusively by the hiring agency to assist with the selection of an applicant.

(3) Polygraph assessments:

(a) Polygraph assessments administered under this chapter shall be based on data from existing research pertaining to screening and diagnostic polygraph assessments, risk assessment, risk management, and field investigation principles;

(b) Polygraph examiners shall ask questions on the following topics: General background, employment history, police/corrections experience, driving record, military service, arrest information, personal habits, illegal drug use or possession, credit/financial, sexual activities, domestic violence/temperament, theft, and security and personal associations. Additional questions shall apply specifically to laterals and corrections officers;

(c) Model questions shall be adopted in commission policy; and

(d) The polygraph examiner shall assure that the polygraph equipment is properly functioning, maintained, and calibrated in compliance with the manufacturer's recommendation.

(4) At a minimum, a polygraph instrument shall continuously record the following components during the assessment process:

- (a) Two pneumograph components to document thoracic and abdominal movement patterns associated with respiration;
- (b) A component to record electro dermal activity reflecting relative changes in the conductance or resistance of current by epidermal tissues;

(c) A cardiograph component to report pulse rate, pulse amplitude, and relative blood pressure changes; and
(d) A motion sensor.

(5) Examiners shall provide hiring agencies with a thorough report that analyzes the results of the assessment. Such report shall include any and all disclosures made by the applicant to the questions asked during the preassessment interview, as well as the results of the applicant's truthfulness to the assessment questions.

(6) The agency which authorized the polygraph assessment shall maintain all documentation of the assessment as required in the law enforcement records retention schedule provided by the Washington state secretary of state's office.

(7) It is the responsibility of the hiring agency to accept the results of the polygraph assessment. The commission does not routinely review these assessments but may do so pursuant to RCW 43.101.400.

(8) A polygraph finding of dishonesty shall disqualify an applicant.

(9) An applicant may be offered employment by more than one agency. The polygraph results may be shared with more than one law enforcement or correctional agency under the following circumstances:

(a) The agency which initiated the polygraph assessment agrees to share the results of the assessment in full with another hiring agency;

(b) The applicant signed a release permitting another hiring agency to obtain the assessment report;

(c) The polygraph assessment was completed within six months of the request; and

(d) The job analyses of both agencies are substantially similar.

[Statutory Authority: RCW 43.101.080. WSR 13-02-060, § 139-07-040, filed 12/27/12, effective 1/27/13; WSR 10-07-037, § 139-07-040, filed 3/10/10, effective 4/10/10.]

OTS-3683.2

Chapter 139-17 WAC COMPLAINTS

NEW SECTION

WAC 139-17-010 Complaint submission and investigation. (1) Any individual may submit a written complaint to the commission about an officer's conduct. Filing a complaint does not make a complainant a party to the commission's action.

(a) Individuals who need assistance filing a written complaint will be accommodated.

(b) The commission shall make the complaint process transparent and accessible including accepting complaints in any format, accepting anonymous and third-party complaints, making language translation available as needed to accommodate complainants, and refraining from

inquiring about complainants' age, immigration status, or other information not relevant to the complaint.

(c) The commission shall review complaints thoroughly and conduct preliminary investigation to evaluate whether to investigate.

(d) Complainants shall receive information about the process for investigation and any potential adjudication and receive the name of a point of contact at the commission to answer questions as needed. Complainants shall also receive a letter providing the final disposition of their complaint, regardless of the decision to investigate or the outcome of the investigation.

(2) The commission shall refer criminal complaints to the law enforcement agency with jurisdiction.

(3) The commission has sole discretion whether to investigate a complaint, and the commission has sole discretion whether to investigate issues or concerns relating to revocation or suspension on any other basis, without restriction as to the source or the existence of a complaint.

(4) The commission may investigate a pattern of complaints or other conduct that individually may not have resulted in a formal adjudication of wrongdoing, but when considered together demonstrate conduct that would constitute a violation of RCW 43.101.105 (2) or (3). The commission must consider the employing agency's policies and procedures and the officer's job duties and assignment in determining what constitutes a pattern.

(5) The commission shall conduct timely and expedient investigations.

(a) The commission may await the conclusion of an agency's internal administrative investigation or a criminal investigation in order to gain access to greater information or conduct a more thorough investigation.

(b) The commission shall not delay investigations in which the employing agency does not fully cooperate per WAC 139-06-030.

(6) A person who files a complaint in good faith under this section is immune from suit or any civil action related to the filing or the contents of the complaint.

(7) All complaints must be resolved with a written determination, regardless of the decision to investigate.

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WSR 22-07-076
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed March 18, 2022, 5:13 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-22-097.

Title of Rule and Other Identifying Information: The department is proposing adoption of chapter 388-394 WAC, Transitional cash assistance: New WAC 388-394-0010 What is the transitional cash assistance (TCA) program?; and amending WAC 388-408-0035 Who is in my assistance unit for basic food?, 388-489-0005 Who is eligible for transitional food assistance?, 388-489-0010 How is my transitional food assistance benefit calculated?, and 388-489-0015 How long will my household receive transitional food assistance?

Hearing Location(s): On April 26, 2022, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington [Street S.E.], Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>; or virtual. Due to the COVID[-19] pandemic, hearings are being held virtually. Please see the DSHS website for the most up-to-date information.

Date of Intended Adoption: Not earlier than April 27, 2022.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., April 26, 2022.

Assistance for Persons with Disabilities: Contact Shelley Tencza, DSHS rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email Tenczsa@dshs.wa.gov [Tencza@dshs.wa.gov], by 5:00 p.m., April 12, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule-making actions support implementation of SHB 1151 (chapter 9, Laws of 2021), effective July 1, 2022. Section 2 of this legislation creates the TCA program, a state-funded cash assistance benefit available to households with children, not simultaneously receiving TANF, who terminate basic food benefits due to exceeding the gross income limit or voluntary closure. Families receiving TCA are eligible for transitional food assistance for a period of five months.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.04.680, 74.08.090.

Statute Being Implemented: RCW 74.04.680.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Troy Burgess, P.O. Box 45470, Olympia, WA 98504, 360-584-5162.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. This amendment is exempt as allowed under RCW 34.05.328 (5) (b) (vii) which states in part, "[t]his section does not apply to ... rules of the department of social and health services relating only to client medical

or financial eligibility and rules concerning liability for care of dependents."

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 34.05.328 (5)(b)(vii).

Explanation of exemptions: The proposed amendments do not impact small businesses. They only impact DSHS clients.

March 17, 2022
Katherine I. Vasquez
Rules Coordinator

SHS-4913.2

**Chapter 388-394 WAC
TRANSITIONAL CASH ASSISTANCE**

NEW SECTION

WAC 388-394-0010 What is the transitional cash assistance (TCA) program? (1) The transitional cash assistance program is a state-funded benefit administered by the department of social and health services and provides an additional cash benefit to low income families who meet specific criteria.

(2) The following definitions apply to this program:

(a) "Family" means an assistance unit with a qualifying child;
(b) "Qualifying child" means a child meeting the following conditions:

(i) Under age 18; or

(ii) Under age 19 and participating full-time in a secondary school program as described in WAC 388-404-0005.

(3) Who is eligible for the transitional cash assistance program?

You may be eligible for transitional cash assistance for the last month you receive basic food benefits if you meet all of the following:

(a) Your basic food assistance is ending because:

(i) Your assistance unit exceeds the maximum gross monthly income limit for your household size under WAC 388-478-0060; or

(ii) You asked us to stop your benefits.

(b) No one in your basic food assistance unit receives temporary assistance for needy families, including tribal TANF, or state family assistance;

(c) Your food assistance unit includes a family with a qualifying child; and

(d) You reside in Washington state as required under WAC 388-468-0005.

(4) What benefits will I receive if I am eligible for the transitional cash assistance program?

(a) Your assistance unit will receive a separate \$10 cash assistance benefit.

- (b) We deposit the cash assistance benefit to your EBT card.
- (5) How do I apply for the transitional cash assistance program?
 - (a) You do not have to apply for the transitional cash assistance program.
 - (b) We will determine if your assistance unit is eligible and automatically provide the benefit to you.
 - (6) There is no limit to the number of times your family can receive transitional cash assistance.
 - (7) Continuance of the program is contingent on state funds specifically for the transitional cash assistance program. The department may discontinue the program when funding is no longer available.

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AMENDATORY SECTION (Amending WSR 13-16-102, filed 8/7/13, effective 9/7/13)

WAC 388-408-0035 Who is in my assistance unit for basic food?

- (1) ((For basic food, a)) A person must be in your assistance unit ((AU)) if they live in the same home as you and ((÷
 - (a) Regularly)) regularly buy food or prepare meals with you. ((+
or
 - (b) You provide meals for them and they pay less than a reasonable amount for meals.))
- (2) If the following people live with you, they must be in your ((AU)) assistance unit even if you do not usually buy or prepare food together:
 - (a) Your spouse;
 - (b) Your parents if you are under age ((twenty-two (even if you are married))) 22;
 - (c) Your children under age ((twenty-two)) 22;
 - (d) The parent of a child who must be in your ((AU)) assistance unit;
 - (e) A child ((other than a foster child)) under age ((eighteen)) 18 who ((doesn't)) does not live with their parent unless the child:
 - (i) Is a foster child;
 - ((i)) (ii) Is emancipated; or
 - ((ii)) (iii) Is not financially dependent on an adult in the ((AU)) assistance unit.
- (3) If any of the people in subsections (1) or (2) of this section already receive transitional food assistance under chapter 388-489 WAC, ((you)) they can only receive benefits if they choose to reapply for basic food as described in WAC 388-489-0022.
- (4) If you live in an institution where you may be eligible for basic food under WAC 388-408-0040, we decide who is in your ((AU)) assistance unit as follows:
 - (a) If the facility is acting as your authorized representative under WAC 388-460-0015, we include you and anyone who must be in your ((AU)) assistance unit under subsection (2) of this rule; or
 - (b) If you apply for benefits on your own, we include you, anyone who must be in your ((AU)) assistance unit under subsection (2) of this ((rule)) section, and other residents you choose to apply with.

(5) Anyone who must be in your ((AU)) assistance unit under subsection (1) or (2) of this section is an ineligible ((AU)) assistance unit member if they:

(a) Are disqualified for an intentional program violation ((IPV)) under WAC 388-446-0015;

(b) Do not meet ((ABAWD)) work requirements under WAC 388-444-0030 (.

(c) ~~Do not meet work requirements under~~) or WAC 388-444-0055;

((d)) (c) Do not provide a ((Social Security)) social security number under WAC 388-476-0005;

((e)) (d) Do not meet the citizenship or alien status requirements under chapter 388-424 WAC;

((f)) (e) Are fleeing a felony charge or violating a condition of parole or probation under WAC 388-442-0010.

(6) If your ((AU)) assistance unit has an ineligible member:

(a) We count the ineligible member's income as part of your ((AU)) assistance unit's income under WAC 388-450-0140;

(b) We count all the ineligible members resources to your ((AU)) assistance unit; and

(c) We do not use the ineligible member to determine your ((AU)) assistance unit's size for the maximum income amount or allotment under WAC 388-478-0060.

(7) If the following people live in the same home as you, you can choose if we include them in your ((AU)) assistance unit:

(a) A permanently disabled person who is age ((sixty)) 60 or over and cannot make their own meals if the total income of everyone else in the home, ((+)) not counting the elderly and disabled person's spouse((+)) is not more than the ((one hundred sixty-five percent)) 165% standard under WAC 388-478-0060;

(b) A boarder. If you do not include a boarder in your ((AU)) assistance unit, the boarder cannot get basic food benefits in a separate ((AU)) assistance unit;

(c) A person placed in your home for foster care. If you do not include this person in your ((AU)) assistance unit, they cannot get basic food benefits in a separate ((AU)) assistance unit;

(d) Roomers; or

(e) Live-in attendants even if they buy or prepare food with you.

(8) If someone in your ((AU)) assistance unit moves out of your home for at least a full issuance month, they are not eligible for benefits as a part of your ((AU)) assistance unit, unless you receive transitional food assistance.

(9) ((For)) Your transitional food assistance ((, your TFA AU)) unit includes the people who were in your basic food ((AU)) assistance unit the month you received transitional cash assistance or for the last month you received:

(a) Temporary assistance for needy families;

(b) State family assistance; or

(c) Tribal TANF benefits.

(10) If someone in your assistance unit received basic food ((or food stamps)) or transitional food assistance in another ((AU)) assistance unit or another state, they cannot receive benefits in your ((AU)) assistance unit for the same period of time unless they ((with one exception. If you already received basic food, food stamp, or transitional food assistance benefits:

((a)) In another state, you are not eligible for basic food for the period of time covered by the benefits you received from the other state; or

~~(b) In another AU, you are not eligible for basic food in a different AU for the same period of time;~~

~~(c) In another AU, but you)) left the ((AU)) assistance unit to live in a shelter for battered women and children under WAC 388-408-0045((, you may be eligible to receive benefits in a separate AU)).~~

~~(11) ((The following people who live in your home are not members of your AU. If they are eligible for basic food, they may be a separate AU:~~

~~(a) Someone who usually buys and prepares food separately from your AU if they are not required to be in your AU; or~~

~~(b) Someone who lives in a separate residence.~~

~~(12)) A student who is ineligible for basic food under WAC 388-482-0005 is not a member of your ((AU)) assistance unit.~~

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, and 7 C.F.R. § 273.1. WSR 13-16-102, § 388-408-0035, filed 8/7/13, effective 9/7/13. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.04.515, 74.08.090, 74.08A.010, and 74.08A.903. WSR 10-13-047, § 388-408-0035, filed 6/9/10, effective 8/1/10. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.510, 74.08.090. WSR 05-19-061, § 388-408-0035, filed 9/16/05, effective 11/1/05. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 2004 c 54. WSR 04-14-040, § 388-408-0035, filed 6/29/04, effective 7/30/04. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510. WSR 04-06-025, § 388-408-0035, filed 2/23/04, effective 4/1/04; WSR 03-19-118, § 388-408-0035, filed 9/16/03, effective 11/1/03. Statutory Authority: RCW 74.04.057, 74.04.500, 74.04.510. WSR 01-21-060, § 388-408-0035, filed 10/16/01, effective 12/1/01. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-408-0035, filed 7/31/98, effective 9/1/98.]

AMENDATORY SECTION (Amending WSR 05-19-060, filed 9/16/05, effective 11/1/05)

WAC 388-489-0005 Who is eligible for transitional food assistance? You are eligible for transitional food assistance for up to five months if you meet the following eligibility criteria:

~~(1) ((If your)) Your family stops receiving cash assistance to include temporary assistance for needy families ((each benefits)), ((including benefits from a)) tribal ((program)) TANF, ((you will be eligible for transitional food assistance for up to five months if you meet all the following eligibility requirements:)) or state family assistance, or:~~

~~(2) Your family receives transitional cash assistance,~~

~~((1)) (3) Your family was receiving basic food at the time we determined you were no longer eligible for ((temporary assistance for needy families)) cash assistance described in subsection (1) of this section, or when you received transitional cash assistance;~~

~~((2)) (4) After your family stops receiving ((temporary assistance for needy families)) cash assistance described in subsection (1) of this section, or receives transitional cash assistance, no other member of your basic food assistance unit ((continues to receive)) re-~~

ceives temporary assistance for needy families, tribal TANF, or state family assistance;

((3)) (5) Your family did not move out of the state of Washington as described in ((+) WAC 388-468-0005(+));

((4)) (6) At the time your family's cash assistance ended, (Your) your family was not in sanction status ((at the time your temporary assistance for needy families grant ended)). Sanction status means:

(a) We reduced or stopped your family's temporary assistance for needy families grant payment because a family member is not:

(i) Meeting WorkFirst program requirements (WAC 388-310-1600); or

(ii) Cooperating with the division of child support (WAC 388-422-0100); or

(b) We decided that a member of your family was not eligible for temporary assistance for needy families because the member:

(i) Failed to meet teen parent living arrangement (WAC 388-486-0005) or teen parent school attendance requirements (WAC 388-410-0010); or

(ii) Was convicted of unlawful practices (WAC 388-446-0005) or for receiving temporary assistance for needy families in two or more states at the same time (WAC 388-446-0010); or

(c) If you are receiving temporary assistance for needy families benefits from a tribal program, your family's grant is reduced or stopped for a reason that is the same as one of the reasons listed in ((4)(a)) (6)(a) or ((4)(b)) (6)(b) of this section.

((5)) (7) At the time your family's temporary assistance for needy families grant ended, your basic food assistance unit did not become ineligible because:

(a) You were applying for recertification of your basic food benefits and refused to cooperate with the application process; or

(b) All members of your assistance unit are ineligible for basic food for the reasons stated in WAC 388-489-0025(3).

((6)) (8) There is no limit to the number of times your family ((may leave temporary assistance for needy families and)) can receive transitional food assistance.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, and 74.08A.010. WSR 05-19-060, § 388-489-0005, filed 9/16/05, effective 11/1/05.]

AMENDATORY SECTION (Amending WSR 10-23-119, filed 11/17/10, effective 12/18/10)

WAC 388-489-0010 How is my transitional food assistance benefit calculated? (1) We base your transitional food assistance benefit amount on the regular monthly benefit allotment issued to your basic food assistance unit for the last month your household received temporary assistance for needy families or the month you qualified for transitional cash assistance. We will not count your last temporary assistance for needy families grant payment when we calculate your transitional food assistance benefit amount. For example:

(a) If your basic food assistance unit's only income was temporary assistance for needy families, the transitional food assistance benefit will be the amount your household would have received if you had no income.

(b) If your basic food benefit was calculated using temporary assistance for needy families plus income from another source, we will count only the income from the other source when calculating the transitional food assistance amount.

(2) We will adjust your transitional food assistance benefits if:

(a) Someone who gets transitional food assistance with you leaves your assistance unit and is found eligible to receive basic food in another assistance unit. We will adjust your benefits by:

(i) Reducing your assistance unit size by the number of persons who left your assistance unit; and

(ii) Removing the income and expenses clearly belonging to the persons who left your assistance unit.

(b) A change to the maximum allotment for basic food under WAC 388-478-0060 results in an increase in benefits for basic food assistance units.

(c) You got an overpayment of basic food benefits and we need to adjust the amount we deduct from your monthly benefits to repay the overpayment as required in WAC 388-410-0033. This includes:

(i) Starting a new monthly deduction;

(ii) Changing the amount of the monthly deduction; and

(iii) Ending the monthly deduction when the amount you owe has been paid off.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.04.515, 74.08.090, 74.08A.010, and 74.08A.903. WSR 10-23-119, § 388-489-0010, filed 11/17/10, effective 12/18/10. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, and 74.08A.010. WSR 05-19-060, § 388-489-0010, filed 9/16/05, effective 11/1/05.]

AMENDATORY SECTION (Amending WSR 10-13-047, filed 6/9/10, effective 8/1/10)

WAC 388-489-0015 How long will my household receive transitional food assistance? (1) If your basic food assistance unit is eligible for transitional food assistance according to WAC 388-489-0005, you will receive transitional food assistance for up to five months ~~((after your household leaves temporary assistance for needy families.))~~ beginning:

(a) The month after your household

~~((1) If you)) stopped getting temporary assistance for needy families, or~~

~~(b) The month after you receive ((from the department, you are eligible for)) transitional cash assistance ((benefits beginning the month after your household received their last grant)).~~

(2) If you stopped receiving tribal TANF benefits, you are eligible for transitional benefits:

(a) With the next monthly issuance after we update your case to show you no longer have tribal TANF income, if the tribal TANF end date is the end of the current month or the end of a prior month; or

(b) On the first of the month following the tribal TANF end date, if the tribal TANF end date is the end of a future month.

(3) If necessary, we will extend or shorten your basic food assistance unit's current certification period to match the five-month transition period.

(4) You may choose to end your five-month transition period early by submitting an application for regular basic food under WAC 388-489-0022 or by asking us to terminate your benefits.

(5) We send you a notice before the end of your five-month transition period so you can reapply for regular basic food benefits and continue to receive benefits without interruption as described in WAC 388-434-0010.

(6) We may terminate your transitional food assistance early for the reasons stated in WAC 388-489-0025.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.04.515, 74.08.090, 74.08A.010, and 74.08A.903. WSR 10-13-047, § 388-489-0015, filed 6/9/10, effective 8/1/10. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, and 74.08A.010. WSR 05-19-060, § 388-489-0015, filed 9/16/05, effective 11/1/05.]

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

WSR 22-07-077

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed March 18, 2022, 6:04 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-24-062.

Title of Rule and Other Identifying Information: WAC
388-101D-0030 Staffing requirements.

Hearing Location(s): On April 26, 2022, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington [Street S.E.], Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>; or virtually. Due to the COVID-19 pandemic, hearings are being held virtually. Please see the DSHS website for the most current information.

Date of Intended Adoption: Not earlier than April 27, 2022.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m. on April 26, 2022.

Assistance for Persons with Disabilities: Contact Shelley Tencza, rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email tenczsa@dshs.wa.gov [tencza@dshs.wa.gov], by 5:00 p.m. on April 12, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Developmental disabilities administration (DDA) is amending this rule to allow providers to hire an employee without a high school diploma or GED.

Reasons Supporting Proposal: These amendments are intended to help providers of residential habilitation services address staffing crises.

Statutory Authority for Adoption: RCW 71A.12.030.

Statute Being Implemented: RCW 71A.12.040, 71A.12.110.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: DSHS, DDA, governmental.

Name of Agency Personnel Responsible for Drafting: Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, 360-407-1500; Implementation and Enforcement: Megan Kwak, P.O. Box 45310, Olympia, WA 98504-5310, 360-764-9909.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, phone 360-407-1500, fax 360-407-0955, TTY 1-800-833-6388, email Chantelle.Diaz@dshs.wa.gov.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The proposed amendments impose no costs on small businesses so a small business economic impact statement is not required.

March 18, 2022
Katherine I. Vasquez
Rules Coordinator

SHS-4900.3

AMENDATORY SECTION (Amending WSR 16-14-058, filed 6/30/16, effective 8/1/16)

WAC 388-101D-0030 Staffing requirements. (1) The ((servicee)) provider must ensure each ((staff meets the following minimum requirements)) of its employees:

((1) Have)) (a) Has a high school diploma or GED equivalent, unless the ((employees were)) employee was hired before September 1, 1991, or is exempt under subsection (2) of this section;

((2) Be at least eighteen years of age)) (b) Is age 18 or older when employed as a direct ((care staff, or at least twenty-one years of age)) support professional who provides support services to a client;

(c) Is age 21 or older when employed as an administrator;

((3) Have)) (d) Has a clear understanding of job responsibilities and knowledge of individual support plans and client needs; and

((4) Passed)) (e) Passes the department background check ((as)) required ((by)) under WAC 388-101-3250.

(2) The provider may hire a person without a high school diploma or GED if while working directly with clients the employee has access to another employee or a volunteer who:

(a) Has a high school diploma or GED; or

(b) Was hired before September 1, 1991.

(3) If the provider hires a person under subsection (2) of this section, the provider must have a written plan that states when and how the person must contact another employee for assistance.

[WSR 16-14-058, recodified as § 388-101D-0030, filed 6/30/16, effective 8/1/16. Statutory Authority: Chapter 71A.12 RCW. WSR 08-02-022, § 388-101-3200, filed 12/21/07, effective 2/1/08.]

WSR 22-07-080

PROPOSED RULES

EASTERN WASHINGTON UNIVERSITY

[Filed March 21, 2022, 9:35 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-04-054.

Title of Rule and Other Identifying Information: WAC 172-139-010
Commercial activities.

Hearing Location(s): On April 28, 2022, at 2:00 p.m., at Eastern Washington University (EWU), Tawanka 215A, Cheney, WA 99004.

Date of Intended Adoption: May 20, 2022.

Submit Written Comments to: Annika Scharosch, EWU, 211 Tawanka Hall, Cheney, WA 99004, email ascharosch@ewu.edu, fax 509-359-6724, by April 29, 2022.

Assistance for Persons with Disabilities: Contact Annika Scharosch, phone 509-359-6724, fax 509-359-2874, email ascharosch@ewu.edu, by April 25, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Clarifies that EWU's rules regarding commercial activities on campus apply both within facilities and on all university property.

Reasons Supporting Proposal: Clarifies the scope of the current rule.

Statutory Authority for Adoption: RCW 28B.35.120(12).

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: EWU, governmental.

Name of Agency Personnel Responsible for Drafting: Annika Scharosch, 211 Tawanka Hall, 509-359-6724; Implementation and Enforcement: Dr. David May, 214 Showalter Hall, 509-359-6362.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. Pursuant to RCW 34.5.328 [34.05.328] (5)(a)(i), this agency is not an agency mandated to comply with RCW 34.05.328. Further, the agency does not voluntarily make that section applicable to the adoption of this rule pursuant to subsection (5)(a)(ii), and to date, the joint administrative rules review committee has not made the section applicable to the adoption of this rule.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

March 21, 2022
Annika Scharosch
Associate Vice President
for Civil Rights, Compliance
and Enterprise Risk Management

OTS-3646.1

AMENDATORY SECTION (Amending WSR 18-21-032, filed 10/5/18, effective 11/5/18)

WAC 172-139-010 Commercial activities. Eastern Washington University property and facilities shall not be used by any person or entity other than the university for commercial solicitation, advertising, or promotional activities except:

(1) By special permission granted by the vice president for business and finance or designee if a contract, lease, or other formal arrangement is entered into between the university and the person, corporation, or other entity desiring to engage in commercial activity;

(2) Regular advertising, promotions, or sponsorship activities carried on, by, or in any university media, *The Easterner*, or at intercollegiate events;

(3) In designated areas of the Pence Union Building as set forth in WAC 172-139-020; or

(4) When the activities clearly serve educational objectives. Examples of acceptable activities include the display of books of interest to the academic community, the display or demonstration of technical or research equipment, or other commercial activities that relate to educational objectives. In all cases, such commercial activities must be conducted under the sponsorship or at the request of a university department or of a vice president or authorized designee. Approved commercial activities shall not interfere with or operate to the detriment of the conduct of university affairs or the free flow of pedestrian or vehicular traffic.

[Statutory Authority: RCW 28B.35.120(12) and 42.56.070. WSR 18-21-032, § 172-139-010, filed 10/5/18, effective 11/5/18. Statutory Authority: RCW 28B.35.120(12). WSR 10-04-072, § 172-139-010, filed 2/1/10, effective 3/4/10. Statutory Authority: RCW 28B.35.120. WSR 92-21-043, § 172-139-010, filed 10/16/92, effective 11/16/92.]

WSR 22-07-086
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed March 22, 2022, 8:20 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-05-073.

Title of Rule and Other Identifying Information: New chapter 296-71 WAC, Refinery worker training and certification in high hazard facilities.

Hearing Location(s): On April 26, 2022, at 1:00 p.m., virtually via Zoom. Please click this URL to join <https://lni-wa-gov.zoom.us/j/88090690032?pwd=ZU0vbklzSWhwNmJNYkY3bVlRZ3BlZz09>, Passcode HHFrule@1; or join by phone, Dial +1-253-215-8782 (Tacoma), Webinar ID 880 9069 0032, Passcode 788321375. The hearing will start at 1:00 p.m. and continue until all oral comments are received.

Date of Intended Adoption: July 19, 2022.

Submit Written Comments to: Tari Enos, Department of Labor and Industries (L&I), Division of Occupational Safety and Health (DOSH), P.O. Box 44620, Olympia, WA 98504-4620, email Tari.Enos@Lni.wa.gov, by May 3, 2022.

Assistance for Persons with Disabilities: Contact Tari Enos, phone 360-902-5541, email Tari.Enos@Lni.wa.gov, by April 19, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposed rule making is to create a new chapter of rules implementing the advanced safety training requirements under chapter 49.80 RCW adopted by the Washington state legislature in 2019. Chapter 49.80 RCW requires owners of petroleum refining or petrochemical manufacturing facilities use a skilled and trained workforce when contracting for construction, alteration, demolition, installation, repair, or maintenance work. All workers in the skilled and trained workforce must have completed at least 20 hours of approved advanced safety training for workers at high hazard facilities within the past three calendar years. Delayed enforcement policies may be used to ensure employers have adequate time to train all employees as required. This proposed rule making includes requirements for advanced safety training certification for workers, curriculum for in-person classroom and laboratory instruction, and approval of training providers. Please see below for a list of the proposed language.

New Sections:

WAC 296-71-001 Purpose and scope.

- Indicates this new chapter applies to the training and certification of skilled and trained workforce under chapter 49.80 RCW, establishing a training course approval program and certification and the issuance of worker certification.

WAC 296-71-003 Definitions.

- Includes definitions of the following terms: Apprenticeable occupation, approved, competent instructor, department, director, high hazard facility, on-site work, owner/operator, person, registered apprentice, revocation, skilled journeyperson, skilled and trained workforce, suspension. These definitions are applicable throughout this chapter, unless context clearly requires otherwise.

WAC 296-71-010 Skilled and trained workforce requirements.

- Establishes the skilled and trained workforce requirements and includes statutory requirements for percentages of the workforce that must be trained, training standards, and employer documentation with recordkeeping standards. This rule also has exceptions from the section outlined.

WAC 296-71-020 Training certification.

- Sets forth how to qualify for, renew, and the issuance of an advanced training certificate.

WAC 296-71-030 Training course approval.

- Training courses must be 20 hours and meet the minimum requirements in Appendix A.

WAC 296-71-040 Reciprocity.

- Outlines the standards for training certificate reciprocity, when reciprocity isn't available, and that L&I will maintain a list of states recognized that meet Washington standards.

WAC 296-71-050 Denial, suspension and revocation.

- Outlines the criteria and how L&I may deny, suspend, or revoke a training certificate or course approval.

Appendix A: Training course content - Mandatory.

- Outlines the curriculum a training course would have to meet to become an approved course.

Reasons Supporting Proposal: Petroleum refineries and petrochemical manufacturing facilities are among the most dangerous worksites for any workers around or in them. Hazardous chemicals, heavy machinery, flammable liquids and gases present a few of the operational risks that these workers face. Accidents from these hazards can lead to both nonfatal, as well as fatal injuries and illnesses. Some of the common injuries and illnesses that these workers may be exposed to include, but are not limited to, crush injuries, lung damage, burn injuries, hearing loss, lacerations, traumatic brain injury, and toxic exposure. To protect these contracted workers, ESHB 1817 was passed in 2019, which created a new chapter, codified as chapter 49.80 RCW, to require that owners of petroleum refining or petrochemical manufacturing facilities use a skilled and trained workforce when contracting for various types of work including construction, alteration, demolition, installation, repair, or maintenance. The rules are needed to implement the advanced safety training requirements established in ESHB 1817.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, and 49.80.060.

Statute Being Implemented: Chapter 49.80 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Chris Miller, Tumwater, Washington, 360-902-5516; Implementation and Enforcement: Craig Blackwood, Tumwater, Washington, 360-902-5828.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Tari

Enos, L&I, DOSH, P.O. Box 44620, Olympia, WA 98504-4620, phone 360-902-5541, email Tari.Enos@Lni.wa.gov.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; and rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. L&I first estimated the total cost for submitting the initial application which was only a labor cost. Second, L&I estimated the annual cost of certification applications which needs to be renewed every three years. The initial application cost is treated as a one-time cost while the certification renewal cost component is annualized to determine the total annual cost of complying with this requirement to affected businesses. The businesses incurring these costs are expected to be within specialty trade contractors, and industrial building construction industries, and are estimated to be approximately 2,870 businesses.

L&I estimates that the proposed rule would impose [an] additional one-time cost of \$3,966.93 and annual costs of \$1,322.31. The total quantifiable benefits of the proposed rule are estimated to be between \$76,587 and \$153,174 annually, in addition to other significant but unquantifiable benefits. Therefore, L&I concludes that the probable benefits of these rules exceed their probable costs.

March 22, 2022
Joel Sacks
Director

OTS-3472.3

Chapter 296-71 WAC

REFINERY WORKER TRAINING AND CERTIFICATION IN HIGH HAZARD FACILITIES

NEW SECTION

WAC 296-71-001 Purpose and scope. This standard contains requirements under chapter 49.80 RCW for:

(1) Owners and operators of petroleum refining or petrochemical manufacturing facilities to use a skilled and trained workforce when

contracting for construction, alteration, demolition, installation, repair or maintenance work at the stationary source.

(2) Training and certification of the skilled and trained workforce, including training course approval, and the issuance of worker certification.

[]

NEW SECTION

WAC 296-71-003 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

Apprenticeable occupation. An occupation for which an apprenticeship program has been approved by the Washington state apprenticeship and training council pursuant to chapter 49.04 RCW.

Approved. Approved by the department.

Competent instructor. An instructor who has demonstrated satisfactory performance in the occupation for a minimum of three years beyond the customary learning period for that occupation and who:

(a) Meets the requirements of the state board for community and technical colleges for a vocational-technical instructor; or

(b) Is recognized within an industry as having expertise in a specific occupation and is a subject matter expert; and

(c) Has training in teaching techniques and adult learning styles. The training may be acquired before, or within one year after, the competent instructor begins to provide related supplemental instruction.

Department. The department of labor and industries.

Director. The director of the department of labor and industries or the director's designee.

High hazard facility. A stationary source that is engaged in activities described in code 324110 or 325110 of the North American Industry Classification System (NAICS).

On-site work. Does not include ship and rail car support activities; environmental inspection and testing; security guard services; work which is performed by an original equipment manufacturer for warranty, repair, or maintenance on the vendor's equipment if required by the original equipment manufacturer's warranty agreement between the original equipment manufacturer and the owner; industrial cleaning not related to construction; safety services requiring professional safety certification; nonconstruction catalyst loading, regeneration, and removal; chemical purging and cleaning; refinery by-product separation and recovery; inspection services not related to construction; and work performed that is not in an apprenticeable occupation.

Owner/operator. The owner or operator of a stationary source that is engaged in activities described in code 324110 or 325110 of the North American Industry Classification System (NAICS).

Person. One or more individuals, partnerships, associations, corporations, business trusts, legal representatives, or any organized group of persons.

Registered apprentice. An apprentice registered in an apprenticeship program approved by the Washington state apprenticeship and training council according to chapter 49.04 RCW.

Revocation. A withdrawal of a certification issued by the department or by department approval.

Skilled journeyperson. The worker either graduated from an apprenticeship program for the applicable occupation that was approved by the Washington state apprenticeship and training council according to chapter 49.04 RCW, or has at least as many hours of on-the-job experience in the applicable occupation that would be required to graduate from an apprenticeship program approved by the Washington state apprenticeship and training council according to chapter 49.04 RCW, and who is paid a wage meeting the requirements of chapter 49.80 RCW.

Skilled and trained workforce. A workforce that meets both of the following criteria:

(a) All the workers are either registered apprentices or skilled journeypersons; and

(b) The workforce meets the approved advanced safety training requirements established in this chapter, and the apprenticeship graduation established in RCW 49.80.030.

Suspension. A temporary withdrawal of department course approval. No suspension may be less than six months or longer than one year.

[]

NEW SECTION

WAC 296-71-010 Skilled and trained workforce requirements. (1)

Owners and operators, when contracting for the performance of construction, alteration, demolition, installation, repair or maintenance work at the stationary source, must require that its contractors and any subcontractors use a skilled and trained workforce to perform all on-site work within an apprenticeable occupation in the building and construction trades. This includes:

(a) The percentages of skilled journeypersons who are graduates of an apprenticeship program for the applicable occupation approved by the Washington state apprenticeship and training council under chapter 49.04 RCW meet the requirements under RCW 49.80.030;

(b) Six months after the effective date of this chapter, all workers in the skilled and trained workforce must have completed at least 20 hours of approved advanced safety training for workers at high hazard facilities within the past three calendar years.

(c) The skilled and trained workforce requirements under this section apply to each individual contractor's and subcontractor's on-site workforce.

(2) The owner/operator must have documentation showing that the skilled and trained workforce requirements are met. This documentation must be provided to the department upon request.

(3) This section does not apply to:

(a) The employees of the owner or operator of the stationary source;

(b) A contractor who has requested qualified workers from the local hiring halls or apprenticeship programs that dispatch workers in the apprenticeable occupation and who, due to workforce shortages, is unable to obtain sufficient qualified workers within two working days of the request; and

(c) Emergencies that make compliance impracticable because they require immediate action to prevent harm to public health, safety, or

the environment. This section applies as soon as the emergency is over, or it becomes practicable for contractors to obtain a qualified workforce.

Note: This section does not prevent the owner or operator of the stationary source from using its own employees to perform any work that has not been assigned to contractors while the employees of the contractor are present and working.

[]

NEW SECTION

WAC 296-71-020 Training certification. (1) To qualify for an advanced safety training certificate, workers must:

- (a) Attend and successfully complete an approved 20-hour advanced safety training course for workers at high hazard facilities.
- (b) Complete an application through an approved training course sponsor.

(2) Workers must do the following to renew and continue certification prior to the certificate expiration date:

- (a) Attend and successfully complete an approved 20-hour advanced safety training course for workers at high hazard facilities.
- (b) Complete an application through an approved training course sponsor.

(3) Upon receipt of the verification of completion of approved training, and the completed application, the department will issue a certificate to the worker which will include:

- (a) The name of the person awarded the certificate;
- (b) Certificate number;
- (c) Expiration date; and
- (d) A statement that the person receiving the certificate has completed the 20-hour high hazard facilities training.

(4) Certificates will be issued and mailed to the individual applicants and will be valid for three years from the date of course completion.

(5) The department may suspend or revoke a certificate as provided in WAC 296-71-050.

[]

NEW SECTION

WAC 296-71-030 Training course approval. (1) High hazard facilities 20-hour training courses may be sponsored by any person, or other entity having department approval. An approved course must meet the minimum required elements for approved course in Appendix A, including topics and hours.

(2) Prior to receiving department approval, each course must be evaluated by the department for the breadth of knowledge and experience required to properly train workers. Course content must be carefully scrutinized for adequacy and accuracy. Training techniques will be evaluated by the department.

(3) Sponsors of training courses proposed for approval must submit:

- (a) Background information about course sponsors;

- (b) Course locations;
- (c) Course fees;
- (d) Copies of course handouts;
- (e) A detailed description of course content and the amount of time allotted to each major topic. See Appendix A for a list of required training topics that must be included;
- (f) A description of teaching methods to be utilized and a list of all audio-visual materials; the department may, in its discretion, request that copies of the materials be provided for review;
- (g) A list of all personnel involved in course preparation and presentation and a description of the background, special training and qualifications of each. Training must be taught by competent instructors. The department may, in its discretion, require proposed instructors to pass an examination on subjects related to their respective topics of instruction;
- (h) A description of student evaluation methods;
- (i) A description of course evaluation methods;
- (j) Any restrictions on attendance (language, class size, affiliation, etc.);
- (k) A list of any other states that currently approve the training course; and
- (l) The amount and type of hands-on training.

(4) Materials may be submitted electronically through the online portal or mailed to:

High Hazard Facilities Program
Department of Labor & Industries
P.O. Box 44615
Olympia, WA 98504-4615

- (5) For timely approval, the initial application for training course approval and course materials must be submitted to the department at least 60 days prior to the requested approval date.
- (6) The decision to grant or renew approval of a training course is the sole discretion of the department.
 - (a) Following approval of a training course, the department will issue the course sponsor an approval that is valid for three years from the date of issuance.
 - (b) Application for renewal must follow the procedures described in subsections (3) and (4) of this section.
- (7) In recognition that the industry is evolving, the department reserves the right to require additional subjects to be taught and to specify the amount of time which must be allotted to adequately cover required subjects. To ensure adequate coverage of required material, each course sponsor must be provided and required to incorporate into their training course, a detailed outline of subject matter developed by the department.
- (8) For timely approval, the training course approval renewal must be received by the department no later than 30 days before the approval expiration date.

- (9) Any changes to a training course must be approved by the department in advance.
- (10) The course sponsor must provide the department with a roster of all persons who have completed the training course. The list must be provided no later than 10 days after course completion and must include the:
 - (a) Training course provider name;
 - (b) Instructor name(s);

- (c) Course name;
- (d) Dates of class;
- (e) Location of class;
- (f) Student's name;
- (g) Student's mailing address; and
- (h) Certificate number (if applicable).

(11) The course sponsor must notify the department, in writing, at least 14 days before a training class is scheduled to begin. The notification must include the date, time, instructor, and address where the training will be conducted.

(12) A representative of the department may, at the department's discretion, attend a training course as an observer to verify that the training course is conducted in accordance with the program approved by the department.

(a) Course sponsors conducting training outside the state of Washington must reimburse the department for reasonable travel expenses associated with department audits of the training courses.

(b) Reasonable travel expenses are defined as current state of Washington per diem and travel allowance rates including airfare and/or surface transportation rates. Such reimbursement must be paid within 30 days of receipt of the billing notice.

(13) The training course sponsor must limit each class to a maximum of 50 participants.

(14) There must be at least one instructor for every 25 students.

(15) Denial, suspension, or revocation of approval will be done in accordance with WAC 296-71-050.

(16) Recordkeeping requirements for training providers: All approved providers of accredited training courses must comply with the following minimum recordkeeping requirements:

(a) Training course materials. A training provider must retain copies of all instructional materials used in delivery of the classroom training such as student manuals, instructor notebooks and handouts.

(b) Instructor qualifications. A training provider must retain copies of all instructors' resumes, and the documents approving each instructor issued by the department. Instructors must be approved by the department before teaching courses for accreditation purposes. A training provider must notify the department in advance whenever it changes course instructors. Records must accurately identify the instructors that taught each particular class for each date that a course is offered.

(c) Training records. The training providers must maintain records that document the names of all persons who have completed training, the disciplines for which training was provided, training dates and training locations.

(d) Record retention and access. The training provider must maintain the records in a manner that allows verification of the required information via telephone, or other communication.

(i) The training provider must maintain all required training course materials for a minimum of the duration of the course offering plus four years.

(ii) The training provider must maintain all required instructor qualification records for the duration of the instructor's employment plus four years.

(iii) The training provider must maintain all required training records for a minimum of four years. The training provider may find it advantageous to retain these records for a longer period.

(iv) The training provider must allow reasonable access to all of the records which may be required by the department for the approval of training providers or the accreditation of training courses, to the department, on request.

(v) If a training provider ceases to conduct training, the training provider must notify the department and give it the opportunity to take possession of that provider's training records.

[]

NEW SECTION

WAC 296-71-040 Reciprocity. (1) The department may recognize 20-hour high hazard facilities training certifications issued by another state provided that:

(a) The worker is in possession of a currently valid certification from the other state;

(b) The training was completed within the past three years; and

(c) The department evaluates the other state's qualification procedures and determines the certification to be equivalent to the minimum requirements of this chapter.

(2) The department will maintain a list of states with recognized 20-hour high hazard facilities training certifications accessible from the department's website.

(3) When the department's evaluation of another state's training and certification procedures identifies deficiencies, the department will require the worker to complete the Washington 20-hour high hazard facilities training before issuing a Washington state certification.

Note: Reciprocity in this section applies only to the 20-hour high hazard facilities training requirement. It does not apply to apprenticeship requirements.

[]

NEW SECTION

WAC 296-71-050 Denial, suspension, and revocation. (1) The department may deny, suspend, or revoke a course approval if the course sponsor does not comply with the training standards and accreditation requirements of this chapter.

(2) The department may suspend or revoke the training course approval, if in the department's judgment the sponsor does not maintain the course content and quality as initially approved, or make changes to a course as required by WAC 296-71-030(7). The criteria for suspension or revocation of training course approval includes, but is not limited to, at least one of the following:

(a) Misrepresentation of the extent of training course approval;

(b) Failure to submit required information or notification in a timely manner;

(c) Failure to maintain requisite records;

(d) Falsification of accreditation records, instructor qualifications, or other accreditation information; or

(e) Failure to adhere to the training standards and accreditation requirements of this chapter.

(3) The department may deny, suspend, or revoke any certificate issued under this chapter if the certificate was obtained through error or fraud.

(4) The criteria for denying, suspending, or revoking a certificate for workers must include at least one of the following:

(a) Obtaining certification from a training provider that does not have approval to offer training;

(b) Obtaining certification through fraudulent representation of training documents;

(c) Obtaining training documentation through fraudulent means.

(5) Before any course approval or certificate may be denied, suspended, or revoked, the holder thereof must be given written notice of the department's intention to do so, mailed by registered mail, return receipt requested, to the holder's last known address.

(6) A denial, suspension, or revocation order may be appealed in accordance with RCW 49.17.140. Any party aggrieved by an order of the board of industrial insurance appeals may obtain superior court review in the manner provided in RCW 49.17.150.

Appendix A: Training course content - Mandatory

Fundamentals of Petroleum Refining	4.0 Hours General Overview	Specific content
Crude oil and its refining into downstream products	Basic high level information about refineries	How crude oil is processed; relevant hazards as described on the safety data sheet for crude oil; fractions and their related hazards (temperatures, pressures, etc.); introduction to key refining processes; classes of refinery processes and refinery configurations; properties of the refinery-produced streams; and the interrelationship between processing units.
Refining Industry Safety Concepts	8.0 Hours WAC Reference	Overview
Exit routes and employee alarm systems	WAC 296-800-310	Details of emergency action plan concepts.
Process safety management for refineries	Chapter 296-67 WAC	Overview of the requirements for process safety management, including: Workplace assessments; stop work authority; job hazard analysis; contractor roles and responsibilities in a refinery facility; and other sections of the rule.
Emergency response	Chapter 296-824 WAC, Emergency response; WAC 296-24-567 Employee emergency plans and fire prevention plans	General overview of emergency operations in a refinery. May include facility-specific information.
Fire brigades	Chapter 296-811 WAC	Understanding how refinery fire brigades work, including rescue operations, confined space entry protocols, fire suppression techniques, use of testing instruments, etc. May include facility-specific information.
Fire prevention and protection	WAC 296-24-567 (general industry); WAC 296-155-250 (construction industry)	Basic overview touching on fire prevention, ignition sources, testing before hot work, etc. May include facility-specific information.
Hazard communication	Chapter 296-901 WAC	Review of chemicals found in refineries and their locations, including general "streams"; personal protective equipment and practices; signs and symptoms of exposure; long-term health effects; and a comprehensive review of relevant safety data sheets.

Personal protective equipment (PPE) for refinery work	WAC 296-800-160 (general industry); WAC 296-155-200 (construction industry)	Fire resistant clothing; head protection; eye protection; foot protection; hearing protection; and contaminated clothing.
Respiratory protection	Chapter 296-842 WAC	The use of respirators in certain refinery locations. May include facility-specific information.
Hearing conservation	Chapter 296-817 WAC	Understanding the areas in a refinery facility where hearing protection is required. May include facility-specific information.
Lockout/tagout	Chapter 296-803 WAC (general industry); WAC 296-155-429 (construction industry)	Energy control protocols in a refinery. May include facility-specific information.
Confined spaces	Chapter 296-809 WAC (general industry) in addition to WAC 296-155-203 (construction industry)	Types of confined spaces in a refinery; entry protocols; atmospheric testing; other related hazards. May include facility-specific information and permit forms.
Heat related illness	WAC 296-62-095	Maintain awareness of outdoor heat in the hot areas of a refinery, which may contribute to heat-related illness.
Refinery safe work practices	General safety in a refinery	Identify walking/working surface hazards; areas of nonentry; understanding general hazards of vessels and other equipment. May include facility-specific information.
Craft-Specific Safety Training	8.0 Hours WAC References	The purpose of this section is to have a discussion about specific interdependencies and relationships of trades, including stacked work; dissimilar trades in direct proximity with each other; dissimilar risks associated with various trades (i.e., radiation, potential falling objects, etc.); job sequencing; and barricading.
Hot work	WAC 296-24-695 Fire prevention and protection (general industry); WAC 296-155-250, fire prevention and protection (construction industry)	Understanding what hot work is and how to perform craft work safely; awareness of ignition sources such as welding, and performing dissimilar work around such areas. Hot work permits are specific to each facility and facility-specific information may be included in training.
Working at heights	Chapter 296-874 WAC, Scaffolds; Chapter 296-880 WAC, Unified safety standards for fall protection	Recognizing where overhead work is occurring; understanding any hazards associated with craft work in such areas.
Electrical	WAC 296-24-957 (general industry); WAC 296-155-426 (construction industry)	Recognizing potential hazards about electrical work in a refinery and how to perform such work around other contract operations.

Pipefitting	Chapter 296-155 WAC: Part D Fire protection and prevention; Part F-1, rigging other than with the use of a crane (winch/tugger, chainfall, etc.); Part G Tools—Hand and power; Part H Welding and cutting; Part L, rigging and signaling with cranes	Basic knowledge of pipe safety: Including eliminating risk of contamination in process lines through fit, purge, weld techniques and pre and post weld buffering and machining. Basic knowledge of testing lines e.g.: Nondestructive pipe testing techniques; safety regarding fuel and pressure pipes including design, construction, location, leak detection and environmental considerations; pressure vessel fabrication certification; welding qualifications; knowledge and application of relevant standards; pipe corrosion; pipe cracks; pipe modifications, e.g., removing, cutting into or destroying existing pipe lines and piping, installing new pipes, maintaining old pipes, etc.
Equipment operating engineers	Chapter 296-155 WAC: Part L, rigging and signaling with cranes; Part F-1, rigging other than with the use of a crane (winch/tugger, chainfall, etc.)	Crane principles, rigging, signaling; forklift principles, etc.
Finishing trades	Chapter 296-155 WAC: Part F, general requirements for storage (Brick/block, handling cement/lime); Part G Tools—Hand and power; Part O Concrete, concrete forms, shoring, and masonry construction	Lead renovator, repair and painting program (RRP) Toxic Substance Control Act (TSCA) Section 402/chapter 365-230 WAC.
Cement masons	Chapter 296-155 WAC: Part F, general requirements for storage (Brick/block, handling cement/lime); Part G Tools—Hand and power; Part O Concrete, concrete forms, shoring, and masonry construction	How cement masons work relates to other work performed in the refinery.
Ironworkers, boilermakers, and steelworkers	Chapter 296-155 WAC: Part D Fire protection and prevention; Part F-1, rigging other than with the use of a crane (winch/tugger, chainfall, etc.); Part G Tools—Hand and power; Part H Welding and cutting; Part L, rigging and signaling with cranes; Part P Steel erection	How boilermakers', ironworkers', and steelworkers' work relates to other work performed in the refinery, including: Measuring, fabricating, cutting, welding and shaping steel parts such as girders, columns and frames; using equipment including shears, welding tools and torches; hoisting steel parts to their appropriate location; ensuring proper alignment and positioning and bolting them into place; assembly and use of equipment, including setting up cable and chain systems for hoisting or moving steel parts; disassembling it after completion of the task; following blueprint and instructions from supervisors to perform all tasks involved in assembly of steel structures; communicate with supervisors and coworkers to ensure smooth teamwork; notifying supervisors immediately of safety or structural concerns; taking apart structures or equipment in accordance with directions and standard operating procedures; repair steel components in older structures; directing crane operators as they move and position steel components; drilling holes and aligning parts with framework in preparation for riveting; use of tools including levels, laser tools and plumb bobs to ensure precise alignment.

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WSR 22-07-090

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed March 22, 2022, 8:27 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-20-124.

Title of Rule and Other Identifying Information: WAC 182-531-1400
Psychiatric physician-related services and other professional mental health services.

Hearing Location(s): On April 26, 2022, at 10:00 a.m. Until further notice, the health care authority (HCA) continues to hold public hearings virtually without a physical meeting place. This promotes social distancing and the safety of the residents of Washington state. To attend the virtual public hearing, you must register in advance https://zoom.us/webinar/register/WN_zsdIV_bnTFeOWg0-c1_Xmw. If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not sooner than April 27, 2022.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by April 26, 2022.

Assistance for Persons with Disabilities: Contact HCA rules coordinator, phone 360-725-1306, fax 360-586-9727, telecommunication[s] relay service 711, email wendy.barcus@hca.wa.gov, by April 15, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA is amending WAC 182-531-1400 to implement changes directed by the legislature in 2SHB 1325, section 2(11), chapter 126, Laws of 2021. For mental health diagnostic assessment of children birth through age five, HCA is directed to reimburse providers for up to five sessions per assessment and for travel costs when a session is conducted in a home or community setting.

Reasons Supporting Proposal: See Purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160; 2SHB 1325, section 2(11), chapter 126, Laws of 2021.

Statute Being Implemented: RCW 41.05.021, 41.05.160; 2SHB 1325, section 2(11), chapter 126, Laws of 2021.

Rule is not necessitated by federal law, federal or state court decision.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Jason Crabbe, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-9563; Implementation and Enforcement: Christine Cole, P.O. Box 45506, Olympia, WA 98504-5506, 360-725-1368.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

March 22, 2022

Wendy Barcus

Rules Coordinator

OTS-3611.2

AMENDATORY SECTION (Amending WSR 19-15-107, filed 7/22/19, effective 8/22/19)

WAC 182-531-1400 Psychiatric physician-related services and other professional mental health services. (1) The mental health services covered in this section are different from the mental health services covered under community mental health and involuntary treatment programs in chapter 182-538D WAC.

(2) Inpatient and outpatient mental health services not covered under chapter 182-538D WAC may be covered by the agency under this section.

Inpatient mental health services

(3) For hospital inpatient psychiatric admissions, providers must comply with chapter 182-538D WAC.

(4) The agency covers professional inpatient mental health services as follows:

(a) When provided by a psychiatrist, psychiatric advanced registered nurse practitioner (ARNP), psychiatric mental health nurse practitioner-board certified (PMHNP-BC), or psychologist in conjunction with the prescribing provider;

(b) The agency pays only for the total time spent on direct psychiatric client care during each visit, including services provided when making rounds. The agency considers services provided during rounds to be direct client care services and may include, but are not limited to:

- (i) Individual psychotherapy up to one hour;
- (ii) Family/group therapy; or
- (iii) Electroconvulsive therapy.

(c) One electroconvulsive therapy or nacrosynthesis per client, per day, and only when performed by a psychiatrist.

Outpatient mental health services

(5) The agency covers outpatient mental health services when provided by the following licensed health care professionals who are eligible providers under chapter 182-502 WAC:

- (a) Psychiatrists;
- (b) Psychologists;
- (c) Psychiatric advanced registered nurse practitioners (ARNP);
- (d) Psychiatric mental health nurse practitioners-board certified (PMHNP-BC);
- (e) Mental health counselors;
- (f) Independent clinical social workers;
- (g) Advanced social workers; or
- (h) Marriage and family therapists.

(6) With the exception of licensed psychiatrists and psychologists, qualified health care professionals who treat clients age ((eighteen)) 18 and younger must:

(a) Have a minimum of ((one hundred)) 100 actual hours of specialized study of child development and treatment and a minimum of one year of supervised experience in the diagnosis and treatment of clients age ((eighteen)) 18 and younger; or

(b) Be working under supervision of a professional who meets these criteria.

(7) The agency does not limit the total number of outpatient mental health visits a licensed health care professional can provide.

(8) The agency evaluates a request for covered outpatient mental health services in excess of the limitations in this section under WAC 182-501-0169.

(9) The agency covers outpatient mental health services with the following limitations:

(a) Diagnostic evaluations. One psychiatric diagnostic evaluation, per provider, per client, per calendar year, unless significant change in the client's circumstances renders an additional evaluation medically necessary and is authorized by the agency. For clients 20 years of age and younger, additional evaluations may be covered if medically necessary and authorized by the agency, per WAC 182-501-0165. For clients five years of age and younger, the agency allows the following:

(i) Up to five sessions to complete a psychiatric diagnostic evaluation. Additional evaluations may be covered if medically necessary and authorized by the agency, per WAC 182-501-0165; and

(ii) Evaluations in the home or community setting, including reimbursement for provider travel.

(b) Psychotherapy. One or more individual or family/group psychotherapy visits, with or without the client, per day, per client, when medically necessary.

(c) Medication management. One psychiatric medication management service, per client, per day, in an outpatient setting when performed by one of the following:

(i) Psychiatrist;

(ii) Psychiatric advanced registered nurse practitioner (ARNP);

or

(iii) Psychiatric mental health nurse practitioner-board certified (PMHNP-BC).

((+9)) (10) To receive payment for providing mental health services, providers must bill the agency using the agency's published billing instructions.

[Statutory Authority: RCW 41.05.021, 41.05.16 [41.05.160], and 2017 c 226. WSR 19-15-107, § 182-531-1400, filed 7/22/19, effective 8/22/19. Statutory Authority: RCW 41.05.021, 41.05.160, 2014 c 225. WSR 16-06-053, § 182-531-1400, filed 2/24/16, effective 4/1/16. Statutory Authority: RCW 41.05.021, 41.05.160. WSR 15-03-041, § 182-531-1400, filed 1/12/15, effective 2/12/15. WSR 11-14-075, recodified as § 182-531-1400, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.09.521. WSR 08-12-030, § 388-531-1400, filed 5/29/08, effective 7/1/08. Statutory Authority: RCW 74.08.090, 74.09.520. WSR 01-01-012, § 388-531-1400, filed 12/6/00, effective 1/6/01.]

WSR 22-07-091

PROPOSED RULES

DEPARTMENT OF HEALTH

[Filed March 22, 2022, 10:51 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-12-041.

Title of Rule and Other Identifying Information: Chapter 246-803 WAC, Acupuncture and Eastern medicine practitioner. The department of health (department) is proposing rule making necessary to implement legislative changes, including amending the definition of "acupuncture and Eastern medicine"; expanding the definition of point injection therapy; allowing the use of oxygen and epinephrine; and other necessary housekeeping changes. Rule making is also necessary to implement the change under SHB 2378 (chapter 80, Laws of 2020) to remove one reference to chapter 18.57A RCW, Osteopathic physician assistant.

Hearing Location(s): On April 29, 2022, at 9:00 a.m. In response to the coronavirus disease 2019 (COVID-19), the department will not provide a physical location for this hearing to promote social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held instead. Register in advance for this webinar https://us02web.zoom.us/webinar/register/WN_fN4GHA2LSe687KREt47U9A. After registering, you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: May 6, 2022.

Submit Written Comments to: Vicki Brown, Program Manager, Acupuncture and Eastern Medicine Practitioner Program, P.O. Box 47852, Olympia, WA 98504-7852, email <https://fortress.wa.gov/doh/policyreview>, fax 360-236-2901, by April 29, 2022.

Assistance for Persons with Disabilities: Contact Vicki Brown, phone 360-236-4865, fax 360-236-2901, TTY 711, email vicki.brown@doh.wa.gov, by April 22, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To implement the statutory changes in SB 5018 (chapter 87, Laws of 2021), the department is proposing to amend in rule the definition of "acupuncture and Eastern medicine" to include modern acupuncture and Eastern medicine therapeutic treatments, including treatment of substance use and points and protocols for ear acupuncture; expanding the definition of point injection therapy to include injection of local anesthetics, such as lidocaine and procaine for reduction of pain during point injection therapy; and allowing the use of oxygen and epinephrine for potential emergency purposes. The department is also proposing rules that establish training and education requirements for the use of local anesthetics, oxygen, and epinephrine.

SHB 2378 repeals chapter 18.57A RCW, Osteopathic physician assistants, and places the authority for these physician assistants under chapter 18.71A RCW, Physician assistants (allopathic). The department is proposing to remove an existing reference to chapter 18.57A RCW in WAC 246-803-010 to align the rule with the statute.

The department is proposing other housekeeping changes as necessary to implement the chapter amendments.

Reasons Supporting Proposal: Standards need to be established in rule to be enforced. SB 5018 amended RCW 18.06.230 to include a requirement for the department to adopt rules by July 1, 2022, to establish the education and training requirements an acupuncturist or acu-

puncture and Eastern medicine practitioner needs prior to administering local anesthetics, epinephrine, or oxygen during point injection therapy services. SHB 2378 changes the statutory authority for osteopathic physician assistants effective July 1, 2022, which necessitates housekeeping changes in these rules to reflect the new statutory reference.

Statutory Authority for Adoption: RCW 18.06.160 and 18.06.230.

Statute Being Implemented: Chapter 18.06 RCW; SB 5018 (chapter 87, Laws of 2021), and SHB 2378 (chapter 80, Laws of 2020).

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of health, acupuncture and Eastern medicine practitioner program, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Vicki Brown, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4865.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Vicki Brown, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4865, fax 360-236-2901, TTY 711, email vicki.brown@doh.wa.gov.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed rules do not impact businesses, the proposed rules only impact provider licensing requirements for licensure as an acupuncture and Eastern medicine practitioner.

March 22, 2022
Kristin Peterson, JD
Deputy Secretary
Policy and Planning
for Umair A. Shah, MD, MPH
Secretary

OTS-3387.3

AMENDATORY SECTION (Amending WSR 21-09-008, filed 4/8/21, effective 5/9/21)

WAC 246-803-010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise:

(1) "Accredited school, college or program" means:

(a) Accredited or has candidacy status as a United States postsecondary school, college or program; or

(b) Accredited by or has candidacy status with the Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM).

(2) "Acupuncture needles" means solid filiform instruments intended to pierce the skin in the practice of acupuncture. Acupuncture needles used on a patient must be sterile and disposable, and may only be used once.

(3) "Acupuncturist or acupuncture and Eastern medicine practitioner" is a person licensed under chapter 18.06 RCW.

(4) "Acupuncturist or acupuncture and Eastern medicine program" means training in acupuncture or Eastern medicine offered by an academic institution that satisfies the education requirements set out in WAC 246-803-210, 246-803-220, and 246-803-230. A program is an established area of study offered on a continuing basis. An acupuncture or acupuncture and Eastern medicine program may be referred to as a program in acupuncture, acupuncture and Eastern medicine, or Eastern medicine.

(5) "Acupuncture or acupuncture and Eastern medicine school" means an accredited academic institution which has the sole purpose of offering training in acupuncture or acupuncture and Eastern medicine that satisfies the education requirements set out in WAC 246-803-210, 246-803-220, and 246-803-230.

(6) "Approved school" means a school, college or program approved by the secretary of the department of health that meets the requirements of WAC 246-803-500.

(7) "Credit" means ((ten)) 10 classroom contact hours on the quarter system or ((fifteen)) 15 classroom contact hours on the semester or trimester system.

(8) "Department" means the department of health.

(9) "Hypodermic needle" means a device intended to inject fluids into, or withdraw fluids from, parts of the body below the surface of the skin.

(10) "Primary health care provider" means an individual licensed under:

- (a) Chapter 18.36A RCW, Naturopathy;
- (b) Chapter 18.57 RCW, Osteopathy—Osteopathic medicine and surgery;
- (c) ((Chapter 18.57A RCW, Osteopathic physicians' assistants; (d))) Chapter 18.71 RCW, Physicians;
- ((e)) (d) Chapter 18.71A RCW, Physician assistants; or
- ((f)) (e) RCW 18.79.050, "Advanced registered nursing practice" defined—Exceptions.

[Statutory Authority: RCW 18.06.160, chapter 18.06 RCW, 2019 c 308, 2020 c 229 and 2020 c 76. WSR 21-09-008, § 246-803-010, filed 4/8/21, effective 5/9/21. Statutory Authority: RCW 18.06.160. WSR 20-03-112, § 246-803-010, filed 1/15/20, effective 2/15/20. Statutory Authority: Chapter 18.06 RCW and 2010 c 286. WSR 11-17-105, § 246-803-010, filed 8/22/11, effective 9/22/11.]

AMENDATORY SECTION (Amending WSR 21-09-008, filed 4/8/21, effective 5/9/21)

WAC 246-803-020 Advertising. (1) A person licensed under this chapter may use the title acupuncturist (Ac), licensed acupuncturist (L.Ac.), acupuncture and Eastern medicine practitioner (AEMP), EAMP, or any derivative thereof in all forms of advertising, professional literature and billing.

(2) An acupuncturist or acupuncture and Eastern medicine practitioner may not use the title "doctor," "Dr.," or "Ph.D." on any adver-

tising or other printed material unless the nature of the degree is clearly stated.

(3) An acupuncturist or acupuncture and Eastern medicine practitioner may not represent that ((he or she)) they hold((s)) a degree from an acupuncture or acupuncture and Eastern medicine school other than that degree which ((appears on his or her application for licensure)) has been awarded to them.

(4) An acupuncturist or acupuncture and Eastern medicine practitioner shall not engage in false, deceptive, or misleading advertising including, but not limited to, the following:

(a) Advertising that misrepresents the potential of acupuncture or Eastern medicine; and

(b) Advertising of any service, technique, or procedure that is outside the scope of practice for an acupuncturist or acupuncture and Eastern medicine practitioner.

[Statutory Authority: RCW 18.06.160, chapter 18.06 RCW, 2019 c 308, 2020 c 229 and 2020 c 76. WSR 21-09-008, § 246-803-020, filed 4/8/21, effective 5/9/21. Statutory Authority: Chapter 18.06 RCW and 2010 c 286. WSR 11-17-105, § 246-803-020, filed 8/22/11, effective 9/22/11.]

AMENDATORY SECTION (Amending WSR 21-09-008, filed 4/8/21, effective 5/9/21)

WAC 246-803-030 Acupuncture ((or)) and Eastern medicine. Acupuncture ((or)) and Eastern medicine is a health care service using acupuncture or Eastern medicine diagnosis and treatment to promote health and treat organic or functional disorders, which includes a variety of traditional and modern acupuncture and Eastern medicine therapeutic treatments, such as the practice of acupuncture techniques and herbal medicine to maintain and promote wellness, prevent, manage, and reduce pain, and treat substance use disorder. Acupuncture and Eastern medicine includes the following:

(1) ((Acupuncture, includes)) The use of presterilized, disposable needles, such as filiform needles, and other acupuncture needles, syringes, or lancets to directly and indirectly stimulate meridians and acupuncture points ((and meridians)) including ashi points, motor points, trigger points, and other nonspecific points throughout the body;

(2) The use of electrical, mechanical, or magnetic devices to stimulate meridians and acupuncture points ((and meridians)) including ashi points, trigger points, and other nonspecific points throughout the body;

(3) Intramuscular needling and dry needling of trigger points and other nonspecific points throughout the body in accordance with acupuncture and Eastern medicine training;

(4) All points and protocols for ear acupuncture including auricular acupuncture, national acupuncture detoxification association protocol, battlefield acupuncture, and the Nogier system;

(5) The use of contact needling and noninsertion tools such as teishin, enshin, or zanshin;

((3)) (6) Moxibustion;

((4)) (7) Acupressure;

((5)) (8) Cupping;

((6)) (9) Dermal friction technique;

- ((7)) (10) Infrared;
- ((8)) (11) Sonopuncture;
- ((9)) (12) Laserpuncture;
- ((10)) (13) Point injection therapy:

(a) ~~((Is defined as meaning))~~ Means the subcutaneous, intramuscular and intradermal injection of substances consistent with the practice of acupuncture or Eastern medicine to stimulate meridians, acupuncture points, ashi points, motor points, trigger points, and ~~((meridians))~~ other nonspecific points throughout the body. Substances are limited to:

- (i) Saline;
- (ii) Sterile water;
- (iii) Herbs specifically manufactured for injection by means of hypodermic needles;
- (iv) Minerals specifically manufactured for injection by means of hypodermic needles;
- (v) Vitamins in liquid form specifically manufactured for injection by means of hypodermic needles; and
- (vi) Homeopathic and nutritional substances specifically manufactured for injection by means of hypodermic needles.

(b) Also includes injection of local anesthetics, such as lidocaine and procaine, for reduction of pain during point injection therapy, consistent with the practice of acupuncture and Eastern medicine and training requirements as defined in WAC 246-803-040.

(c) Used by an acupuncturist or acupuncture and Eastern medicine practitioner who has met the training and education requirements in RCW 18.06.230, may administer oxygen and epinephrine for potential emergency purposes, such as an allergic or adverse reaction, for patient care and safety.

(d) For the purposes of this ~~((section))~~ subsection, includes trigger points as a subset of acupuncture points and ashi points as recognized in the current practice of acupuncture or Eastern medicine.

((+e)) (e) Does not include injection of controlled substances contained in Schedules I through V of the Uniform Controlled Substances Act, chapter 69.50 RCW or steroids as defined in RCW 69.41.300.

((11)) (14) Dietary advice and health education based on acupuncture or Eastern medical theory, including the recommendation and sale of herbs, vitamins, minerals, and dietary and nutritional supplements.

(a) Health education is educational information directed to the patient that attempts to improve, maintain, promote and safeguard the health care of the patient. Health education consists of educating the patient on how the mind, body and spirit connect in context of imbalances, emotional patterns and tendencies as defined by and treated in acupuncture or Eastern medicine.

(b) Health education does not include mental health counseling;

((12)) (15) Breathing, relaxation, and Eastern exercise techniques;

((13)) (16) Qi gong;

((14)) (17) Eastern massage ~~((. Eastern massage means))~~, manual techniques having originated in East Asia involving the manipulation of the soft tissues of the body for therapeutic purposes.

(a) Eastern massage consists of:

(i) Applying fixed or movable pressure;

(ii) Passive, resistive, and assisted stretching of fascial and connective tissue;

(iii) Holding or causing movement of the body; or

(iv) Tapping, compressions or friction.

(b) Eastern massage may be performed with the use of tools common to the practice and aids of superficial heat, cold, water, lubricants, salts, minerals, liniments, poultices, and herbs.

(c) Eastern massage does not include attempts to adjust or manipulate any articulations of the body or spine or mobilization of these articulations by the use of a thrusting force.

((15)) (18) Tui na((.Tui na is)), a method of Eastern body-work, characterized by the kneading, pressing, rolling, shaking, and stretching of the body and does not include spinal manipulation; ((and))

((16)) (19) Superficial heat and cold therapies.

[Statutory Authority: RCW 18.06.160, chapter 18.06 RCW, 2019 c 308, 2020 c 229 and 2020 c 76. WSR 21-09-008, § 246-803-030, filed 4/8/21, effective 5/9/21. Statutory Authority: RCW 18.06.160. WSR 20-03-112, § 246-803-030, filed 1/15/20, effective 2/15/20. Statutory Authority: RCW 18.06.230, 18.06.160, and 18.06.010. WSR 17-15-006, § 246-803-030, filed 7/5/17, effective 7/5/17. Statutory Authority: Chapter 18.06 RCW and 2010 c 286. WSR 11-17-105, § 246-803-030, filed 8/22/11, effective 9/22/11.]

AMENDATORY SECTION (Amending WSR 21-09-008, filed 4/8/21, effective 5/9/21)

WAC 246-803-040 Education and training for point injection therapy. Acupuncturist or acupuncture and Eastern medicine practitioners employing point injection therapy shall use only those substances and techniques for which they have received training.

(1) The education and training for point injection therapy must:

(a) Consist of a minimum total of ((twenty-four)) 24 contact hours of training in the topics required in this section;

(b) Include at least eight hours of clinical practical experience; and

(c) Be administered by an instructor that meets the requirements of subsection (4) of this section.

(2) A curriculum for a point injection therapy training program must include:

(a) Review of physical examination, contraindications and universal precautions, and differential diagnosis;

(b) Compounding and administration of the substances authorized for point injection therapy under WAC 246-803-030, including aseptic technique, recordkeeping and storage of substances authorized for use in point injection therapy;

(c) Use of local anesthetics, such as lidocaine and procaine, for reduction of pain during point injection therapy, consistent with the practice of acupuncture and Eastern medicine;

(d) Emergency procedures to include the use of oxygen and epinephrine for potential emergency purposes, such as an allergic or adverse reaction, for patient care and safety;

((d)) (e) Point injection therapy techniques and contraindication within the acupuncture or Eastern medicine scope of practice relative to the authorized substances listed in WAC 246-803-030 ((10)) (13)(a)(i) through (vi).

(3) ((Except for the training in the use of intramuscular epinephrine, the)) All training must be delivered in person and not through webinar or other online or distance learning method.

(4) An instructor for point injection therapy must have:

(a) A health care credential in good standing with a scope of practice that includes point injection therapy; and

(b) At least five years of experience in a health care practice that includes point injection therapy.

(5) In addition to point injection therapy meeting the requirements of subsections (1) and (2) of this section, acupuncturists or acupuncture and Eastern medicine practitioners using point injection therapy must complete a minimum of two hours of training specifically in the use of intramuscular epinephrine, local anesthetics and oxygen.

(a) ((Training in the use of intramuscular epinephrine must be according to RCW 70.54.440(4)).

(b) This)) The training may be taken separately from the training in point injection therapy.

((+e) Up to)) (b) The minimum of two hours of training ((in the use of intramuscular epinephrine)) count ((in)) towards meeting the requirement for ((twenty-four)) 24 hours of contact training as required in subsection (1) (a) of this section.

((+d)) (c) An acupuncturist or acupuncture and Eastern medicine practitioner who holds an active credential with a scope of practice that includes the authority to prescribe, dispense or administer epinephrine, local anesthetics, or oxygen does not need to meet the requirements of (a) of this subsection.

(6) To qualify under this section, the training program shall provide each successful student with a:

(a) Certificate of successful completion of the program; and

(b) Course syllabus outlining the schedule and curriculum of the program.

(7) The requirements of subsections (1) through (6) of this section do not apply to an acupuncturist or acupuncture and Eastern medicine practitioner who has provided point injection therapy prior to ((July 1, 2017)) June 9, 2016. Acupuncturists or acupuncture and Eastern medicine practitioners using point injection therapy prior to ((July 1, 2017)) June 9, 2016, must have completed training and education in point injection therapy.

(8) Prior to administering local anesthetic, epinephrine, or oxygen in providing point injection therapy services, an acupuncturist or acupuncture and Eastern medicine practitioner must satisfy the education and training requirements set out in this section.

(9) Any acupuncturist or acupuncture and Eastern medicine practitioner performing point injection therapy must be able to demonstrate, upon request of the department of health, successful completion of education and training in point injection therapy.

[Statutory Authority: RCW 18.06.160, chapter 18.06 RCW, 2019 c 308, 2020 c 229 and 2020 c 76. WSR 21-09-008, § 246-803-040, filed 4/8/21, effective 5/9/21. Statutory Authority: RCW 18.06.230, 18.06.160, and 18.06.010. WSR 17-15-006, § 246-803-040, filed 7/5/17, effective 7/5/17.]

AMENDATORY SECTION (Amending WSR 21-09-008, filed 4/8/21, effective 5/9/21)

WAC 246-803-240 Examinations. (1) The examinations administered by the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) are the official examinations for licensure as an acupuncturist or acupuncture and Eastern medicine practitioner.

(2) An applicant for licensure as an acupuncturist or acupuncture and Eastern medicine practitioner must pass the following examinations:

- (a) Foundations of Oriental medicine examination;
- (b) Acupuncture with point location examination;
- (c) Biomedicine examination; and
- (d) Council of Colleges of Acupuncture and Oriental Medicine (CCAOM) clean needle technique course.

(3) If the applicant takes the examinations listed in subsection (2) of this section in a language other than English, they must also take and pass the internet-based test of English as a foreign language ((~~TOEFL~~ internet-based (IBT))) ibTOEFL examination with an overall score of not less than 89. This is done by obtaining scores on the ((~~TOEFL~~ IBT)) ibTOEFL of at least:

- (a) ((24)) Twenty-four on the writing section;
- (b) ((26)) Twenty-six on the speaking section;
- (c) ((21)) Twenty-one on the reading section; and
- (d) ((18)) Eighteen on the listening comprehension section.

[Statutory Authority: RCW 18.06.160, chapter 18.06 RCW, 2019 c 308, 2020 c 229 and 2020 c 76. WSR 21-09-008, § 246-803-240, filed 4/8/21, effective 5/9/21. Statutory Authority: Chapter 18.06 RCW and 2010 c 286. WSR 11-17-105, § 246-803-240, filed 8/22/11, effective 9/22/11.]

AMENDATORY SECTION (Amending WSR 21-09-008, filed 4/8/21, effective 5/9/21)

WAC 246-803-300 Patient notification of qualifications and scope of practice. Acupuncturists or acupuncture and Eastern medicine practitioners in the state of Washington shall provide to each patient prior to or at the time of the initial patient visit the qualifications and scope of practice form. The form must include:

(1) The acupuncturist's or acupuncture and Eastern medicine practitioner's education. The degree obtained and the dates and locations of the didactic and clinical training.

(2) License information, including state license number and date of licensure.

(3) A statement that the practice of acupuncture or acupuncture and Eastern medicine in the state of Washington includes the following:

(a) Acupuncture((, including the)) and Eastern medicine means a health care service utilizing acupuncture and Eastern medicine therapeutic treatments, such as the practice of acupuncture techniques and herbal medicine to maintain and promote wellness, prevent, manage, and reduce pain, and treat substance use disorder;

(b) Use of presterilized, disposable needles, such as filiform needles, and other acupuncture needles, syringes, or lancets to directly and indirectly stimulate meridians and acupuncture points ((and

meridians) including ashi points, motor points, trigger points, and other nonspecific points throughout the body;

((b)) (c) Use of electrical, mechanical, or magnetic devices to stimulate meridians and acupuncture points ((and meridians)) including ashi points, motor points, trigger points, and other nonspecific points throughout the body;

(d) Intramuscular needling and dry needling of trigger points and other nonspecific points throughout the body in accordance with acupuncture and Eastern medicine training;

(e) All points and protocols for ear acupuncture including auricular acupuncture, national acupuncture detoxification association protocol, battlefield acupuncture, and the Nogier system;

(f) Use of contact needling and noninsertion tools such as teishin, enshin, or zanshin;

((e)) (g) Moxibustion;

((d)) (h) Acupressure;

((e)) (i) Cupping;

((f)) (j) Dermal friction technique;

((g)) (k) Infrared;

((h)) (l) Sonopuncture;

((i)) (m) Laserpuncture;

((j)) (n) For the purposes of this section, point injection therapy is defined as meaning the subcutaneous, intramuscular and intradermal injection of substances consistent with the practice of acupuncture or Eastern medicine to stimulate meridians, acupuncture points, ashi points, motor points, trigger points, and ((meridians)) other nonspecific points throughout the body.

(i) ((For the purposes of this section,)) Point injection therapy includes trigger points as a subset of acupuncture points and ((ashi points)) ashi points as recognized in the current practice of acupuncture and Eastern medicine.

(ii) Point injection therapy does not include injection of controlled substances contained in Scheduled I through V of the Uniform Controlled Substance Act, chapter 69.50 RCW or steroids as defined in RCW 69.41.300.

(iii) Substances that may be injected are limited to:

(A) Saline;

(B) Sterile water;

(C) Herbs specifically manufactured for injection by means of hypodermic needles;

(D) Minerals specifically manufactured for injection by means of hypodermic needles;

(E) Vitamins in liquid form specifically manufactured for injection by means of hypodermic needles; ((and))

(F) Homeopathic and nutritional substances specifically manufactured for injection by means of hypodermic needles;

(G) Local anesthetics, such as lidocaine and procaine, for reduction of pain during point injection therapy, consistent with the practice of acupuncture and Eastern medicine; and

(H) Oxygen and epinephrine for potential emergency purposes, such as an allergic or adverse reaction, for patient care and safety, and may only be administered by an acupuncturist or acupuncture and Eastern medicine practitioner using point injection therapy who has met the training and education requirements established pursuant to RCW 18.06.230.

((k)) (o) Dietary advice and health education based on acupuncture or Eastern medical theory, including the recommendation and sale of herbs, vitamins, minerals, and dietary and nutritional supplements;

((l)) (p) Breathing, relaxation, and Eastern exercise techniques;

((m)) (q) Qi gong;

((n)) (r) Eastern massage and Tui na (which is a method of Eastern bodywork); and

((o)) (s) Superficial heat and cold therapies.

(4) A statement that side effects of the treatments listed ((above)) in subsection (3) of this section may include, but are not limited to, the following:

(a) Pain following treatment;

(b) Minor bruising;

(c) Infection;

(d) Needle sickness; and

(e) Broken needle.

(5) A statement that patients must inform the acupuncturist or acupuncture and Eastern medicine practitioner if they have a severe bleeding disorder or pacemaker prior to any treatment.

[Statutory Authority: RCW 18.06.160, chapter 18.06 RCW, 2019 c 308, 2020 c 229 and 2020 c 76. WSR 21-09-008, § 246-803-300, filed 4/8/21, effective 5/9/21. Statutory Authority: RCW 18.06.160. WSR 20-03-112, § 246-803-300, filed 1/15/20, effective 2/15/20. Statutory Authority: Chapter 18.06 RCW and 2010 c 286. WSR 11-17-105, § 246-803-300, filed 8/22/11, effective 9/22/11.]

WSR 22-07-092
PROPOSED RULES
DEPARTMENT OF HEALTH
(Board of Hearing and Speech)
[Filed March 22, 2022, 11:05 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-13-038.

Title of Rule and Other Identifying Information: WAC 246-828-025, 246-828-075, 246-828-300, and 246-828-990, Hearing and speech. The board of hearing and speech (board) and the department of health (department) is proposing rule amendments to clarify definitions, supervision of students requirements, and expired license or certification requirements. The proposed rule amendments also establish fees for the hearing aid specialist practical examinations and update and reduce verification and duplicate credential fees.

Hearing Location(s): On May 6, 2022, at 10:00 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the board will not provide a physical location for this hearing to promote social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held instead. Join on your computer or mobile app https://teams.microsoft.com/l/meetup-join/19%3ameeting_YjhNmNDE2MzgtMGU1OS00ZTRiLWFmZTQtN2R1NDQwNDdjZTNi%40thread.v2/0?context=%7b%22Tid%22%3a%2211d0e217-264e-400a-8ba0-57dcc127d72d%22%2c%20id%22%3a%22ae4b66e-af0e-436f-a863-213f33d92a5c%22%7d; or call-in (audio only) +1 564-999-2000, 187640940# United States, Olympia, Phone Conference ID 187 640 940#.

Date of Intended Adoption: May 6, 2022.

Submit Written Comments to: Kim-Boi Shadduck, Program Manager, Department of Health, P.O. Box 47852, Olympia, WA 98504-7852, email <https://fortress.wa.gov/doh/policyreview>, fax 360-236-2901, by April 22, 2022.

Assistance for Persons with Disabilities: Contact Kim-Boi Shadduck, phone 360-236-2912, TTY 711, email kimboi.shadduck@doh.wa.gov, by April 22, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule amendments clarify requirements for hearing and speech professions and make the rules consistent with nationally accepted standards. The proposed rule amendments increase clarity for supervision of students and reduce license barriers for practitioners with expired licenses to reactivate their licenses.

The proposed rule amendments establish the practical examination fee and update and reduce verification and duplicate credential fees for consistency with other health profession programs.

The board determined no changes are necessary for WAC 246-828-020 and 246-828-04503.

Reasons Supporting Proposal: The proposed rule amendments clarify requirements for hearing and speech professions and make the rules consistent with nationally accepted standards. The proposed rule amendments clarify definitions and supervision requirements for students.

The proposed rule amendment clarifies existing requirements when the health care provider must retake their national examination due to having an expired license. It also provides additional licensure op-

tions for audiologists and speech-language pathologists who have an expired license for more than three years and have not been in active practice.

The proposal will establish a fee for the practical exam required for a hearing aid specialist license. The board and the department have tracked costs of this exam since it became a legislative requirement in July 2015 and determined a fee is necessary to support the cost of the program. All other applicants under this chapter pay for their examination through their college tuition.

The proposed rule amendment updates and reduces verification and duplicate credential fees for consistency with other health profession programs.

Statutory Authority for Adoption: RCW 18.35.161 and 43.70.250.

Statute Being Implemented: Chapter 18.35 RCW; and RCW 43.70.250.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Board of hearing and speech, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Kim-Boi Shadduck, Program Manager, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-2912.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Kim-Boi Shadduck, Program Manager, Department of Health, P.O. Box 47852-7852, Olympia, WA 98507, phone 360-236-2912, fax 360-236-2901, TTY 711, email kimboi.shadduck@doh.wa.gov.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The proposed rule does not affect small businesses. These rules only apply to providers.

March 22, 2022

Brenda L. Litke

Board of Hearing and Speech Chair

and Kristin Peterson, JD

Deputy Secretary for Policy and Planning

for Umair A. Shah, MD, MPH

Secretary

OTS-2080.8

AMENDATORY SECTION (Amending WSR 21-06-011, filed 2/18/21, effective 3/21/21)

WAC 246-828-025 Definitions. The definitions in this section apply throughout this chapter unless the context clearly indicates otherwise.

(1) "Board-approved institution of higher education" means:

(a) An institution offering a program in audiology or speech-language pathology leading to a master's degree or its equivalent, or a doctorate degree or its equivalent, that has been accredited by the

council on academic accreditation in audiology and speech-language pathology, or an equivalent program.

(b) An institution offering a speech-language pathology assistant program or a speech, language, and hearing program approved by the state board for community and technical colleges, the higher education coordinating board, or an equivalent body from another state or province.

(c) ~~An institution ((s where education was obtained)) outside of the United States or Canada offering a speech-language pathology assistant program or a speech, language, and hearing program which has an equivalency determination completed by the board. ((This)) The program must lead to an associate of arts or sciences degree, certificate of proficiency, or bachelor of arts or sciences degree.~~

((+e+)) (d) A board-approved institution must integrate instruction in multicultural health as part of its basic education preparation curriculum under RCW 43.70.615.

(2) "Direct supervision" means the supervisor is on-site and in view during the procedures or tasks.

(3) "Hearing assistive technologies" means assistive listening systems or devices, and other technologies that increase the intelligibility, improves sound quality, or clarity of speech or sounds with or without the presence of background noise where hearing instruments alone may not provide optimal comprehension including, but not limited to, telecoil and Bluetooth.

(4) "Indirect supervision" means the procedures or tasks are performed under the supervising speech-language pathologist's, audiologist's, or hearing aid specialist's overall direction and control and the supervisor is accessible, but the supervisor's presence is not required during the performance of procedures or tasks.

(5) "Place or places of business" means a permanent address open to the public, which may include an "establishment" as defined in RCW 18.35.010(6), where a licensee engages in the fitting and dispensing of hearing instruments.

(6) "Postgraduate professional work experience" means a supervised full-time professional experience, or the part-time equivalent, as defined in these rules, involving direct patient or client contact, consultations, recordkeeping, and administrative duties relevant to a bona fide program of clinical work. Applicants who obtain an Au.D. at a board-approved institution of higher education are considered to have met the postgraduate professional work experience requirement.

(7) "Purchaser" or "buyer" means a patient, client, or legally authorized representative.

[Statutory Authority: RCW 18.35.310. WSR 21-06-011, § 246-828-025, filed 2/18/21, effective 3/21/21. Statutory Authority: RCW 18.35.161. WSR 19-13-041, § 246-828-025, filed 6/12/19, effective 7/13/19. Statutory Authority: 2014 c 189, RCW 18.35.161, 18.130.062, and 18.130.020. WSR 15-14-092, § 246-828-025, filed 6/29/15, effective 7/1/15. Statutory Authority: RCW 18.35.161, 43.70.250. WSR 10-15-093, § 246-828-025, filed 7/20/10, effective 7/26/10. Statutory Authority: RCW 18.35.161. WSR 06-19-109, § 246-828-025, filed 9/20/06, effective 10/21/06. Statutory Authority: RCW 18.35.040(2) and 18.35.161. WSR 98-13-109, § 246-828-025, filed 6/17/98, effective 7/18/98.]

AMENDATORY SECTION (Amending WSR 15-14-092, filed 6/29/15, effective 7/1/15)

WAC 246-828-075 ((Supervisors of students.)) Requirements when students perform duties of their profession while under supervision.

(1) A student((s)) enrolled in a board approved program may perform hearing aid specialist, audiologist, speech-language pathologist, or speech-language pathology assistant duties in the course of their educational training, while under supervision according to this section. For speech-language pathology applicants, supervised experience acquired during an educational program may not be applied towards the hours of postgraduate professional work experience required in WAC 246-828-04503.

(2) Supervisors of students must meet the following licensure requirements:

(a) A speech-language pathology or speech-language pathology assistant student must be supervised by a speech-language pathologist licensed and in good standing under chapter 18.35 RCW.

(b) An audiology student must be supervised by an audiologist licensed in good standing under chapter 18.35 RCW.

(c) A hearing aid specialist student must be supervised by a hearing aid specialist or an audiologist licensed and in good standing under chapter 18.35 RCW who has practiced for at least ((thirty-six)) 36 of the last ((forty-eight)) 48 months immediately preceding the beginning of supervision.

((+2))) (3) A student((s)) may only perform those activities within the scope of practice for which they are adequately trained.

((+3))) (4) The student must at all times wear an identification badge readily visible to the public that identifies ((him or her)) them as a student.

((+4))) (5) The licensee who is supervising hearing aid specialist students must cosign all purchase agreements for the sale of hearing instruments. A supervisor may only ((be in a supervisor/supervisee relationship with)) supervise a maximum of three students at a time.

((+5))) (6) The licensee who is supervising speech-language pathology or audiology students may include simultaneous observations with the student or the submission of written reports or summaries by the student for supervisor monitoring, review and approval. At least ((fifty)) 50 percent of each student's time in each diagnostic evaluation, including screening and identification, must be observed directly by a supervisor. The observations may take place on site or by ((closed-circuit television)) an audio/visual technology system that is HIPAA compliant.

[Statutory Authority: 2014 c 189, RCW 18.35.161, 18.130.062, and 18.130.020. WSR 15-14-092, § 246-828-075, filed 6/29/15, effective 7/1/15. Statutory Authority: RCW 18.35.161, 43.70.250. WSR 10-15-093, § 246-828-075, filed 7/20/10, effective 7/26/10. Statutory Authority: RCW 18.35.161. WSR 06-19-109, § 246-828-075, filed 9/20/06, effective 10/21/06; WSR 04-02-068, § 246-828-075, filed 1/7/04, effective 2/7/04; WSR 98-06-079, § 246-828-075, filed 3/3/98, effective 4/3/98. Statutory Authority: RCW 18.35.161 (1) and (3). WSR 95-19-017 § 246-828-075, filed 9/7/95, effective 10/8/95.]

AMENDATORY SECTION (Amending WSR 10-15-093, filed 7/20/10, effective 7/26/10)

WAC 246-828-300 Expired license or certification. (1) If the license or certification has expired for three years or less, the practitioner must meet the requirements ((~~of chapter 246-12 WAC, Part 2~~) for renewal credentialing of practitioners in WAC 246-12-020 through 246-12-051).

(2) If the license or certification has expired for over three years, and the practitioner has been in active practice in another United States jurisdiction, the practitioner must:

(a) Submit verification of active practice from any other United States jurisdiction; and

(b) Meet the requirements ((~~of chapter 246-12 WAC, Part 2~~) for renewal credentialing of practitioners in WAC 246-12-020 through 246-12-051).

(3) If the license ((~~or certification~~) for a hearing aid specialist) has expired for over three years, and the practitioner has not been in active practice in another United States jurisdiction, the practitioner must:

(a) Successfully pass the examination as provided in ((~~RCW 18.35.050~~) WAC 246-828-020; and

(b) Meet the requirements ((~~of chapter 246-12 WAC, Part 2~~) for renewal credentialing of practitioners in WAC 246-12-020 through 246-12-051).

(4) If the license for an audiologist or speech language pathologist has expired for over three years, and the practitioner has not been in active practice in another United States jurisdiction, the practitioner must:

(a) (i) Successfully pass the examination as provided in WAC 246-828-020; or

(ii) Provide verification of maintenance of Certificate of Clinical Competence (CCC) from the American Speech-Language Hearing Association (ASHA) or be board certified in audiology by the American Board of Audiology; and

(b) Meet the requirements for renewal credentialing of practitioners in WAC 246-12-020 through 246-12-051.

[Statutory Authority: RCW 18.35.161, 43.70.250. WSR 10-15-093, § 246-828-300, filed 7/20/10, effective 7/26/10. Statutory Authority: RCW 43.70.280. WSR 98-05-060, § 246-828-300, filed 2/13/98, effective 3/16/98. Statutory Authority: RCW 18.35.161 (1) and (3). WSR 95-19-017, § 246-828-300, filed 9/7/95, effective 10/8/95. Statutory Authority: RCW 18.35.161. WSR 91-11-031 (Order 165B), recodified as § 246-828-300, filed 5/8/91, effective 6/8/91; WSR 89-04-017 (Order PM 818), § 308-50-350, filed 1/23/89. Statutory Authority: 1983 c 39 § 7. WSR 83-23-056 (Order PL 447), § 308-50-350, filed 11/15/83.]

AMENDATORY SECTION (Amending WSR 16-07-087, filed 3/17/16, effective 7/1/16)

WAC 246-828-990 Hearing aid specialist, audiologist, speech-language pathologist, and speech-language pathology assistant fees and renewal cycle. (1) Credentials must be renewed every year on the

practitioner's birthday as provided in ((chapter 246-12 WAC, Part 2))
WAC 246-12-030.

(2) Practitioners must pay the following nonrefundable fees:

Audiologist or Speech-Language Pathologist

Fee Type:	Fee
Interim permit	
Application	\$165.00
Permit	140.00
Initial license	
Application	110.00
License	95.00
HEAL-WA* surcharge	16.00
Active license renewal	
Renewal	75.00
Late renewal penalty	50.00
HEAL-WA* surcharge	16.00
Expired license reissuance	140.00
Inactive license	
Renewal	60.00
Expired license reissuance	90.00
Verification of license	((30.00)) <u>25.00</u>
Duplicate license	((30.00)) <u>10.00</u>

* Surcharge applies to speech-language pathologists only. HEAL-WA is the health resources for Washington online library. See RCW 43.70.110.

Hearing Aid Specialist

Fee Type:	Fee
Initial license	
Application	\$110.00
License	95.00
Hearing aid specialist practical exam for Washington hearing society applicants	\$350.00
Active license renewal	
Renewal	75.00
Late renewal penalty	50.00
Expired license reissuance	136.00
Inactive license renewal	
Renewal	56.00
Expired license reissuance	86.00
Verification of license	((30.00)) <u>25.00</u>
Duplicate license	((30.00)) <u>10.00</u>

Speech-Language Pathology Assistant

Fee Type:	Fee
Initial credential	

**Speech-Language Pathology
Assistant**

Fee Type:	Fee
Application	\$85.00
Active credential renewal	
Renewal	45.00
Late renewal penalty	45.00
Expired credential reissuance	50.00
Inactive credential renewal	
Renewal	50.00
Expired credential reissuance	50.00
Verification of credential	<u>((15.00))</u> <u>25.00</u>
Duplicate credential	<u>((15.00))</u> <u>10.00</u>

[Statutory Authority: RCW 43.70.250 and 43.70.280. WSR 16-07-087, § 246-828-990, filed 3/17/16, effective 7/1/16. Statutory Authority: RCW 43.70.250, 43.70.280 and 2014 c 189. WSR 15-16-020, § 246-828-990, filed 7/24/15, effective 8/24/15. Statutory Authority: RCW 43.70.280 and 2013 c 249. WSR 13-21-077, § 246-828-990, filed 10/17/13, effective 1/1/14. Statutory Authority: RCW 43.70.110, 43.70.250, and 2011 1st sp.s. c 50. WSR 11-20-092, § 246-828-990, filed 10/4/11, effective 12/1/11. Statutory Authority: RCW 18.35.161, 43.70.250. WSR 10-15-093, § 246-828-990, filed 7/20/10, effective 7/26/10. Statutory Authority: RCW 43.70.110, 43.70.250, 2008 c 329. WSR 08-15-014, § 246-828-990, filed 7/7/08, effective 7/7/08. Statutory Authority: RCW 43.70.250, [43.70.]280 and 43.70.110. WSR 05-12-012, § 246-828-990, filed 5/20/05, effective 7/1/05. Statutory Authority: RCW 18.35.161. WSR 04-02-068, § 246-828-990, filed 1/7/04, effective 2/7/04. Statutory Authority: RCW 43.70.280. WSR 98-05-060, § 246-828-990, filed 2/13/98, effective 3/16/98. Statutory Authority: RCW 18.35.090 and 43.70.250. WSR 97-04-043, § 246-828-990, filed 1/31/97, effective 1/31/97. Statutory Authority: RCW 18.35.161 (1) and (3). WSR 95-19-017, § 246-828-990, filed 9/7/95, effective 10/8/95. Statutory Authority: RCW 43.70.250. WSR 94-08-038, § 246-828-990, filed 3/31/94, effective 5/1/94; WSR 93-14-011, § 246-828-990, filed 6/24/93, effective 7/25/93; WSR 91-13-002 (Order 173), § 246-828-990, filed 6/6/91, effective 7/7/91. Statutory Authority: RCW 43.70.040. WSR 91-11-030 (Order 139), recodified as § 246-828-990, filed 5/8/91, effective 6/8/91. Statutory Authority: RCW 43.70.250. WSR 90-04-094 (Order 029), § 308-50-440, filed 2/7/90, effective 3/10/90. Statutory Authority: RCW 43.24.086. WSR 87-18-031 (Order PM 667), § 308-50-440, filed 8/27/87.]

WSR 22-07-098
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 22-04—Filed March 22, 2022, 1:37 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-03-089.

Title of Rule and Other Identifying Information: Free fishing weekend: Proposed amendments to WAC 220-220-230 to address changes in types of fishing that are "free" to fishing without a state license.

Hearing Location(s): On June 23-25, 2022, at 8:00 a.m., webinar. The public may participate in the meeting. Registration is required to testify at the public hearing. Registration deadlines and registration forms are available at <http://wdfw.wa.gov/about/commission/meetings> or contact the commission office at 360-902-2267.

Date of Intended Adoption: July 2022.

Submit Written Comments to: Washington department of fish and wildlife (WDFW) Fish Program, email FreeFishing102@PublicInput.com, fax voicemail comments 855-925-2801, project code 2906, website portal <https://publicinput.com/FreeFishing102>, by June 28, 2022.

Assistance for Persons with Disabilities: Contact Title VI/ADA compliance coordinator, phone 360-902-2349, TTY 711, email [Title6@dfw.wa.gov](mailto>Title6@dfw.wa.gov), <https://wdfw.wa.gov/accessibility/requests-accommodation>, by June 28, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendment would limit the waiver of a license requirement on free fishing weekend to fish that do not require a catch record card. The amendment would prohibit fishing for or possessing (1) shellfish and (2) fish that require a catch record card on free fishing weekend, unless the fisher or harvester possesses an appropriate license (if otherwise required).

Under the existing rule, the Saturday and Sunday following the first Monday in June is declared to be free fishing weekend in Washington. On that weekend, a fishing license is not required for any person, regardless of age or residency, to fish for or possess fish and shellfish, except that it is unlawful to fish for or possess any species for which a catch record is required without a valid catch record card in possession. Additionally, a fish and wildlife lands vehicle use permit is not required to use department parking facilities, and anglers may fish with two poles in all lakes where it is legal to do so without purchasing a two-pole endorsement. During free fishing weekend, only the license, endorsements, and permit provided for in WAC 220-220-230 are affected, and all other rules including the catch record card requirement remain in effect.

The proposed rule, if adopted, would limit the waiver of licensure requirements for free fishing weekend to fish that do not require a catch record card. On free fishing weekend, licenses and catch record cards (if applicable) would be required to gather or possess shellfish or fish requiring a catch record card. A fishing license would not be required for any person, regardless of age or residency, to fish for or possess fish that do not require a catch record card on free fishing weekend. The new rule would waive the requirement for a vehicle access pass and continue to allow fishing with two poles (where legal) without a two-pole endorsement, on free fishing weekend.

Reasons Supporting Proposal: Amendments being considered are intended to address management and conservation concerns related to ac-

counting of fish harvesting. Historically, free fishing weekend has led to high levels of harvest of shellfish, which limits other opportunities throughout the year. In addition, the lack of a licensure requirement for fish that require catch records has led to challenges regarding catch accounting.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.055, 77.12.047, 77.32.010, 77.32.025, 77.32.090.

Statute Being Implemented: RCW 77.32.025, 77.12.047.

Rule is not necessitated by federal law, federal or state court decision.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

Name of Proponent: WDFW, governmental.

Name of Agency Personnel Responsible for Drafting: Kirt Hughes, Kirt.hughes@dfw.wa.gov, 360-480-2421; Implementation: Kelly Cunningham, Kelly.cunningham@dfw.wa.gov, 360-902-2325; and Enforcement: Chief Steve Bear, Steve.bear@dfw.wa.gov, 360-902-2373.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. This proposal does not require a cost-benefit analysis under RCW 34.05.328 (5) [(a)](i).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The proposed rule applies to recreational fishing opportunities and does not affect small businesses.

March 22, 2022
Annie Szvetecz
Rules Coordinator

OTS-3693.1

AMENDATORY SECTION (Amending WSR 19-20-074, filed 9/27/19, effective 10/28/19)

WAC 220-220-230 Free fishing weekend. The Saturday and Sunday following the first Monday in June is declared to be free fishing weekend in Washington. On this weekend a fishing license is not required for any person, regardless of age or residency, to fish for or possess fish ((and shellfish and a fish and wildlife lands vehicle use permit is not required to utilize department parking facilities except that it is unlawful to fish for or possess any species for which a catch record is required without a valid catch record card in possession.)) for which a catch record card is not required. On free fishing weekend, anglers may fish with two poles in all lakes where it is legal to do so without purchasing a two-pole endorsement((. During free fishing weekend)), and a fish and wildlife lands vehicle access pass is not required to use department parking facilities. Only the license, endorsements, and permit provided for in this section are af-

fected, and all other rules ((including the catch record card requirement)) remain in effect.

Free fishing weekend does not apply to fish that require a catch record card or shellfish, and any licensure requirements otherwise provided for by rule continue to apply to those species.

[Statutory Authority: RCW 77.04.012, 77.04.055, 77.12.240, 77.12.800, 77.32.090 and 77.32.470. WSR 19-20-074 (Order 19-240), § 220-220-230, filed 9/27/19, effective 10/28/19. Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.047. WSR 17-05-112 (Order 17-04), recodified as § 220-220-230, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 77.04.020 and 77.12.047. WSR 11-16-103 (Order 11-184), § 220-55-160, filed 8/3/11, effective 9/3/11. Statutory Authority: RCW 77.12.047. WSR 06-13-023 (Order 06-135), § 220-55-160, filed 6/13/06, effective 7/14/06. Statutory Authority: RCW 75.08.080 and 77.12.040. WSR 99-08-029 (Order 99-13), § 220-55-160, filed 3/30/99, effective 5/1/99.]

WSR 22-07-100

PROPOSED RULES

UTILITIES AND TRANSPORTATION

COMMISSION

[Filed March 22, 2022, 1:48 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-10-088.

Title of Rule and Other Identifying Information: WAC 480-100-600 through 480-100-665, planning. The proposed rules revise WAC 480-100-600 through 480-100-665 to implement chapter 19.405 RCW, with a focus on RCW 19.405.030, 19.405.040, 19.405.050, 19.405.130, and other portions of chapter 19.405 RCW that may affect or be affected by these subsections as enacted in E2SSB 5116, the Clean Energy Transformation Act (CETA). The commission is considering these changes under Commission Docket UE-210183.

Hearing Location(s): On May 6, 2022, at 9:30 a.m., Zoom <https://utc-wa-gov.zoom.us/j/99973659661?pwd=VVJ3a2pkZnNhWn1NTCtHWmRkeVBUUT09>. To participate by phone, call 253-215-8782 and use Meeting ID 999 7365 9661 and Passcode 317768. Public hearing to consider adoption of the proposed rules.

Date of Intended Adoption: May 6, 2022.

Submit Written Comments to: Amanda Maxwell, Executive Director and Secretary, P.O. Box 47250, Olympia, WA 98504-7250, email records@utc.wa.gov, by April 22, 2022.

Assistance for Persons with Disabilities: Contact human resources, phone 360-664-1160, TTY 360-586-8203, email human_resources@utc.wa.gov, by April 22, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 19.405.130(3) requires the commission to adopt rules by June 30, 2022, defining the requirements for meeting the obligations under RCW 19.405.030 through [19.405.]050 with market purchases from the energy imbalance market and other centralized markets and to address the prohibition on double counting of non-power attributes under RCW 19.405.040 that could occur under other programs. Specifically, the rule making interprets and implements RCW 19.405.040 (1)(a), the treatment of energy storage for compliance with RCW 19.405.030 through 19.405.050, and other portions of chapter 19.405 RCW that may affect or be affected by these portions of CETA.

Reasons Supporting Proposal: The Washington legislature in 2019 passed CETA, which in RCW 19.405.130(3) requires the commission to promulgate new rules by June 30, 2022, for investor-owned electric utilities.

Statutory Authority for Adoption: 80.01.040, 80.04.160; chapters 80.28, 19.280, and 19.405 RCW.

Statute Being Implemented: Chapters 19.405, 80.28, and 19.280 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington utilities and transportation commission (UTC), governmental.

Name of Agency Personnel Responsible for Drafting: Steve Johnson, 621 Woodland Square Loop S.E., Lacey, WA 98503, 360-481-1573; Implementation and Enforcement: Amanda Maxwell, 621 Woodland Square Loop S.E., Lacey, WA 98503, 360-664-1110.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. UTC is not an agency to which RCW 34.05.328 applies.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. UTC is proposing to adopt rules to implement provisions of CETA by (1) defining the requirements for complying with RCW 19.405.030 through 19.405.050 with electric market purchases from carbon and electricity markets outside of the state; (2) addressing the prohibition of double counting of nonpower attributes under RCW 19.405.040; (3) interpreting the requirement to "use" electricity for compliance with RCW 19.405.040 (1)(a); and (4) addressing the treatment of energy storage for compliance with RCW 19.405.030 through 19.405.050. On February 23, 2022, UTC mailed a notice to all stakeholders interested in the rule making, providing a copy of the draft rules and an opportunity to respond to a small business economic impact statement questionnaire. The notice requested that entities affected by the proposed rules provide information about possible cost impacts of the rules with specific information for each rule that the entity identified as causing an impact. UTC did not receive any information in response to the questionnaire. Based on the information available to it, UTC determined that the proposed rules merely implement the statute as required by the legislature. UTC further determined that the proposed rules adopt statutory requirements for investor-owned utilities, none of which are small businesses, and the proposed rules do not impose any more-than-minor costs on small businesses.

A copy of the detailed cost calculations may be obtained by contacting Steve Johnson, 621 Woodland Square Loop S.E., Lacey, WA 98503, phone 360-481-1573, TTY 800-833-6384 or 711, email steve.johnson@utc.wa.gov.

March 22, 2022
Amanda Maxwell
Executive Director and Secretary

OTS-3653.3

PART VIII—PLANNING AND IMPLEMENTATION

AMENDATORY SECTION (Amending WSR 21-02-022, filed 12/28/20, effective 12/31/20)

WAC 480-100-605 Definitions. The definitions below apply to all of WAC 480-100-600 through 480-100-665.

"Allocation of electricity" means, for the purposes of setting electricity rates, the costs and benefits associated with the resour-

ces used to provide electricity to an electric utility's retail electricity consumers that are located in this state.

"Alternative lowest reasonable cost and reasonably available portfolio" means, for purposes of calculating the incremental cost of compliance in RCW 19.405.060(3), the portfolio of investments the utility would have made and the expenses the utility would have incurred if not for the requirement to comply with RCW 19.405.040 and 19.405.050. The alternative lowest reasonable cost and reasonably available portfolio must include the social cost of greenhouse gases in the resource acquisition decision in accordance with RCW 19.280.030 (3)(a).

"Biomass energy" includes: Organic by-products of pulping and the wood manufacturing process; animal manure; solid organic fuels from wood; forest or field residues; untreated wooden demolition or construction debris; food waste and food processing residuals; liquors derived from algae; dedicated energy crops; and yard waste.

Biomass energy does not include:

- Wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenic;
- Wood from old growth forests; or
- Municipal solid waste.

"Carbon dioxide equivalent" or "CO₂e" means a metric measure used to compare the emissions from various greenhouse gases based upon their global warming potential.

"CEAP" means the clean energy action plan.

"CEIP" means the clean energy implementation plan.

"Coal-fired resource" means a facility that uses coal-fired generating units, or that uses units fired in whole or in part by coal as feedstock, to generate electricity. Coal-fired resource does not include:

- An electric generating facility that is included as part of a limited duration wholesale power purchase, not to exceed one month, made by an electric utility for delivery to retail electric customers that are located in this state for which the source of the power is not known at the time of entry into the transaction to procure the electricity; or
- An electric generating facility that is subject to an obligation to meet the standards contained in RCW 80.80.040 (3)(c).

"Commission" means the Washington utilities and transportation commission.

"Conservation and efficiency resources" means any reduction in electric power consumption that results from increases in the efficiency of energy use, production, transmission, or distribution.

"Cost-effective" means that a project or resource is forecast:

(a) To be reliable and available within the time it is needed; and (b) to meet or reduce the electric power demand of the intended consumers at an estimated incremental system cost no greater than that of the least-cost similarly reliable and available alternative project or resource, or any combination thereof.

"Customer benefit indicator" means an attribute, either quantitative or qualitative, of resources or related distribution investments associated with customer benefits described in RCW 19.405.040(8).

"Demand response" means changes in electric usage by demand-side resources from their normal consumption patterns in response to changes in the price of electricity, or to incentive payments designed to induce lower electricity use, at times of high wholesale market

prices or when system reliability is jeopardized. Demand response may include measures to increase or decrease electricity production on the customer's side of the meter in response to incentive payments.

"Distributed energy resource" means a nonemitting electric generation or renewable resource or program that reduces electric demand, manages the level or timing of electricity consumption, or provides storage, electric energy, capacity, or ancillary services to an electric utility and that is located on the distribution system, any subsystem of the distribution system, or behind the customer meter, including conservation and energy efficiency.

"Energy assistance" means a program undertaken by a utility to reduce the household energy burden of its customers.

- Energy assistance includes, but is not limited to, weatherization, conservation and efficiency services, and monetary assistance, such as a grant program or discounts for lower income households, intended to lower a household's energy burden.

- Energy assistance may include direct customer ownership in distributed energy resources or other strategies if such strategies achieve a reduction in energy burden for the customer above other available conservation and demand-side measures.

"Energy assistance need" means the amount of assistance necessary to achieve an energy burden equal to six percent for utility customers.

"Energy burden" means the share of annual household income used to pay annual home energy bills.

"Equitable distribution" means a fair and just, but not necessarily equal, allocation of benefits and burdens from the utility's transition to clean energy. Equitable distribution is based on disparities in current conditions. Current conditions are informed by, among other things, the assessment described in RCW 19.280.030 (1)(k) from the most recent integrated resource plan.

"Fossil fuel" means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such a material.

"Greenhouse gas" includes carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride, and any other gas or gases designated by the department of ecology by rule under RCW 70A.45.010.

"Highly impacted community" means a community designated by the department of health based on the cumulative impact analysis required by RCW 19.405.140 or a community located in census tracts that are fully or partially on "Indian country," as defined in 18 U.S.C. Sec. 1151.

"Implementation period" means the four years after the filing of each clean energy implementation plan through 2045. The first implementation period will begin January 1, 2022, and will end December 31, 2025, and the second implementation period will begin on January 1, 2026, and will end on December 31, 2029.

"Integrated resource plan" or "IRP" means an analysis describing the mix of generating resources, conservation, methods, technologies, and resources to integrate renewable resources and, where applicable, address overgeneration events, and efficiency resources that will meet current and projected needs at the lowest reasonable cost to the utility and its ratepayers and that complies with the requirements specified in RCW 19.280.030(1).

"Lowest reasonable cost" means the lowest cost mix of generating resources and conservation and efficiency resources determined through a detailed and consistent analysis of a wide range of commercially

available resources. At a minimum, this analysis must consider resource cost, market-volatility risks, demand-side resource uncertainties, resource dispatchability, resource effect on system operation, the risks imposed on the utility and its customers, public policies regarding resource preference adopted by Washington or the federal government, and the cost of risks associated with environmental effects, including emissions of carbon dioxide. The analysis of the lowest reasonable cost must describe the utility's combination of planned resources and related delivery system infrastructure and show consistency with chapters 19.280, 19.285, and 19.405 RCW.

"Natural gas" means naturally occurring mixtures of hydrocarbon gases and vapors consisting principally of methane, whether in gaseous or liquid form, including methane clathrate. Natural gas does not include renewable natural gas or the portion of renewable natural gas when blended into other fuels.

"Nonemitting electric generation" means electricity from a generating facility or a resource that provides electric energy, capacity, or ancillary services to an electric utility and that does not emit greenhouse gases as a by-product of energy generation. Nonemitting electric generation does not include renewable resources.

"Nonpower attributes" means all environmentally related characteristics, exclusive of energy, capacity reliability, and other electrical power service attributes, that are associated with the generation of electricity including, but not limited to, the facility's fuel type, geographic location, vintage, qualification as a renewable resource, and avoided emissions of pollutants to the air, soil, or water, and avoided emissions of carbon dioxide and other greenhouse gases. Nonpower attributes does not include any aspects, claims, characteristics, and benefits associated with the on-site capture and destruction of methane or other greenhouse gases at a facility through a digester system, landfill gas collection system, or other mechanism, which may be separately marketable as greenhouse gas emission reduction credits, offsets, or similar tradable commodities. However, these separate avoided emissions may not result in or otherwise have the effect of attributing greenhouse gas emissions to the electricity.

"Primary compliance" means the portion of the compliance obligation under RCW 19.405.040(1) that cannot be met through the alternative compliance options outlined in RCW 19.405.040 (1)(b).

"Renewable energy credit" or "REC" means a tradable certificate of proof of one megawatt-hour of a renewable resource. The certificate includes all of the nonpower attributes associated with that one megawatt-hour of electricity and the certificate is verified by a renewable energy credit tracking system selected by the department of commerce.

"Renewable resource" means water; wind; solar energy; geothermal energy; renewable natural gas; renewable hydrogen; wave, ocean, or tidal power; biodiesel fuel that is not derived from crops raised on land cleared from old growth or first growth forests; or biomass energy.

"Resource" includes, but is not limited to, generation, conservation, distributed generation, demand response, efficiency, and storage.

"Resource need" means any current or projected deficit to reliably meet electricity demands created by changes in demand, changes to system resources, or their operation to comply with state or federal requirements. Such demands or requirements may include, but are not limited to, capacity and associated energy, capacity needed to meet

peak demand in any season, fossil-fuel generation retirements, equitable distribution of benefits or reduction of burdens, cost-effective conservation and efficiency resources, demand response, and renewable and nonemitting resources.

"Retail electric load" means the amount of megawatt-hours of electricity delivered in a given calendar year by an electric utility to its Washington retail electric customers. "Retail electric load" does not include:

(a) Megawatt-hours delivered from qualifying facilities under the federal Public Utility Regulatory Policies Act of 1978, P.L. 95-617, in operation prior to May 7, 2019, provided that no entity other than the electric utility can make a claim on delivery of the megawatt-hours from those resources; or

(b) Megawatt-hours delivered to an electric utility's system from a renewable resource through a voluntary renewable energy purchase by a retail electric customer of the utility in which the renewable energy credits associated with the megawatt-hours delivered are retired on behalf of the retail electric customer.

"Retained nonpower attribute" or "retained NPA" means the nonpower attributes of renewable electricity (represented by RECs) or the nonpower attributes of nonemitting electricity, from electricity owned or controlled by a utility where the associated electricity was sold by that utility in a wholesale sale without its associated nonpower attributes (NPA).

"Social cost of greenhouse gas emissions" or "SCGHG" is the inflation-adjusted costs of greenhouse gas emissions resulting from the generation of electricity, as required by RCW 80.28.405, the updated calculation of which is published on the commission's website.

"Unbundled renewable energy credit" or "unbundled REC" means a renewable energy credit that is sold, delivered, or purchased separately from the underlying electricity. All thermal renewable energy credits are considered unbundled renewable energy credits.

"Unspecified electricity" means an electricity source for which the fuel attribute is unknown or has been separated from the energy delivered to retail electric customers.

"Vulnerable populations" means communities that experience a disproportionate cumulative risk from environmental burdens due to: (a) Adverse socioeconomic factors, including unemployment, high housing and transportation costs relative to income, access to food and health care, and linguistic isolation; and (b) sensitivity factors, such as low birth weight and higher rates of hospitalization.

[Statutory Authority: RCW 80.01.040, 80.04.160, and chapters 80.28, 19.280, and 19.405 RCW. WSR 21-02-022 (Dockets UE-191023 and UE-190698, General Order 601), § 480-100-605, filed 12/28/20, effective 12/31/20.]

AMENDATORY SECTION (Amending WSR 21-02-022, filed 12/28/20, effective 12/31/20)

WAC 480-100-610 Clean energy transformation standards. (1) On or before December 31, 2025, each utility must eliminate coal-fired resources from its allocation of electricity to Washington retail electric customers;

(2) By January 1, 2030, each utility must ensure all retail sales of electricity to Washington electric customers are greenhouse gas neutral;

(3) By January 1, 2045, each utility must ensure that nonemitting electric generation and electricity from renewable resources supply ((one hundred)) 100 percent of all retail sales of electricity to Washington electric customers;

(4) In making progress toward and meeting subsections (2) and (3) of this section, each utility must:

(a) Pursue all cost-effective, reliable, and feasible conservation and efficiency resources((r)) and demand response;

(b) Maintain and protect the safety, reliable operation, and balancing of the electric system; and

(c) Ensure that all customers are benefiting from the transition to clean energy through:

(i) The equitable distribution of energy and nonenergy benefits and reduction of burdens to vulnerable populations and highly impacted communities;

(ii) Long-term and short-term public health and environmental benefits and reduction of costs and risks; and

(iii) Energy security and resiliency.

(5) Each utility must demonstrate that it has made progress toward and has met the standards in this section at the lowest reasonable cost.

[Statutory Authority: RCW 80.01.040, 80.04.160, and chapters 80.28, 19.280, and 19.405 RCW. WSR 21-02-022 (Dockets UE-191023 and UE-190698, General Order 601), § 480-100-610, filed 12/28/20, effective 12/31/20.]

AMENDATORY SECTION (Amending WSR 21-02-022, filed 12/28/20, effective 12/31/20)

WAC 480-100-620 Content of an integrated resource plan. (1)

Purpose. Consistent with chapters 80.28, 19.280, and 19.405 RCW, each electric utility has the responsibility to identify and meet its resource needs with the lowest reasonable cost mix of conservation and efficiency, generation, distributed energy resources, and delivery system investments to ensure the utility provides energy to its customers that is clean, affordable, reliable, and equitably distributed. At a minimum, integrated resource plans must include the components listed in this rule. Unless otherwise stated, the assessments, evaluations, and forecasts should be over an appropriate planning horizon.

(2) **Load forecast.** The IRP must include a range of forecasts of projected customer demand that reflect the effect of economic forces on the consumption of electricity and address changes in the number, type, and efficiency of end uses of electricity.

(3) **Distributed energy resources.**

(a) The IRP must include assessments of a variety of distributed energy resources. These assessments must incorporate nonenergy costs and benefits not fully valued elsewhere within any integrated resource plan model. Utilities must assess the effect of distributed energy resources on the utility's load and operations under RCW 19.280.030 (1)(h). The commission strongly encourages utilities to engage in a distributed energy resource planning process as described in RCW

19.280.100. If the utility elects to use a distributed energy resource planning process, the IRP should include a summary of the results.

(b) The required distributed energy resource assessments must include the following:

(i) Energy efficiency and conservation potential assessment - The IRP must assess currently employed and potential policies and programs needed to obtain all cost-effective conservation, efficiency, and load management improvements, including the ~~((ten-year))~~ 10-year conservation potential used in calculating a biennial conservation target under chapter 480-109 WAC;

(ii) Demand response potential assessment - The IRP must assess currently employed and new policies and programs needed to obtain all cost-effective demand response;

(iii) Energy assistance potential assessment - The IRP must include distributed energy programs and mechanisms identified pursuant to RCW 19.405.120, which pertains to energy assistance and progress toward meeting energy assistance need; and

(iv) Other distributed energy resource potential assessments - The IRP must assess other distributed energy resources that may be installed by the utility or the utility's customers including, but not limited to, energy storage, electric vehicles, and photovoltaics. Any such assessment must include the effect of distributed energy resources on the utility's load and operations.

(4) **Supply-side resources.** The IRP must include an assessment of a wide range of commercially available generating and nonconventional resources, including ancillary service technologies.

(5) **Renewable resource integration.** An assessment of methods, commercially available technologies, or facilities for integrating renewable resources including, but not limited to, battery storage and pumped storage, and addressing overgeneration events, if applicable to the utility's resource portfolio. The assessment may address ancillary services.

(6) **Regional generation and transmission.** The IRP must include an assessment of the availability of regional generation and transmission capacity on which the utility may rely to provide and deliver electricity to its customers.

(a) The assessment must include the utility's existing transmission capabilities ~~((r))~~ and future resource needs during the planning horizon, including identification of facilities necessary to meet future transmission needs.

(b) The assessment must also identify the general location and extent of transfer capability limitations on its transmission network that may affect the future siting of resources.

(7) **Resource evaluation.** The IRP must include a comparative evaluation of all identified resources and potential changes to existing resources for achieving the clean energy transformation standards in WAC 480-100-610 at the lowest reasonable cost.

(8) **Resource adequacy.** The IRP must include an assessment and determination of resource adequacy metrics. It must also identify an appropriate resource adequacy requirement and measurement metrics consistent with RCW 19.405.030 through 19.405.050.

(9) **Economic, health, and environmental burdens and benefits.** The IRP must include an assessment of energy and nonenergy benefits and reductions of burdens to vulnerable populations and highly impacted communities; long-term and short-term public health and environmental benefits, costs, and risks; and energy security risk. The assessment

should be informed by the cumulative impact analysis conducted by the department of health.

(10) **Scenarios and sensitivities.** The IRP must include a range of possible future scenarios and input sensitivities for the purpose of testing the robustness of the utility's resource portfolio under various parameters. The IRP must also provide a narrative description of scenarios and sensitivities the utility used, including those informed by the advisory group process.

(a) At least one scenario must describe the alternative lowest reasonable cost and reasonably available portfolio that the utility would have implemented if not for the requirement to comply with RCW 19.405.040 and 19.405.050, as described in WAC 480-100-660(1). This scenario's conditions and inputs should be the same as the preferred portfolio except for those conditions and inputs that must change to account for the impact of RCW 19.405.040 and 19.405.050.

(b) At least one scenario must be a future climate change scenario. This scenario should incorporate the best science available to analyze impacts including, but not limited to, changes in snowpack, streamflow, rainfall, heating and cooling degree days, and load changes resulting from climate change.

(c) At least one sensitivity must be a maximum customer benefit scenario. This sensitivity should model the maximum amount of customer benefits described in RCW 19.405.040(8) prior to balancing against other goals.

(11) **Portfolio analysis and preferred portfolio.** The utility must integrate the demand forecasts and resource evaluations into a long-range integrated resource plan solution describing the mix of resources that meet current and projected resource needs. The utility may not include retained NPAs for primary compliance in its long-range integrated resource plan solution, consistent with WAC 480-100-650(1) (a). The utility may not include retained NPAs in any way in its long-range integrated resource plan solution, consistent with WAC 480-100-650(2). Each utility must provide a narrative explanation of the decisions it has made, including how the utility's long-range integrated resource plan expects to:

(a) Achieve the clean energy transformation standards in WAC 480-100-610 (1) through (3) at the lowest reasonable cost;

(b) Serve utility load, based on hourly data, with the output of the utility's owned resources, market purchases, and power purchase agreements, net of any off-system sales of such resources;

(c) Meet the requirements of WAC 480-100-650 (1) (a) and (2);

(d) Include all cost-effective, reliable, and feasible conservation and efficiency resources, using the methodology established in RCW 19.285.040, and demand response;

((d)) (e) Consider acquisition of existing renewable resources;

((e)) (f) In the acquisition of new resources constructed after May 7, 2019, rely on renewable resources and energy storage, insofar as doing so is at the lowest reasonable cost;

((f)) (g) Maintain and protect the safety, reliable operation, and balancing of the utility's electric system, including mitigating over-generation events and achieving the identified resource adequacy requirement;

((g)) (h) Achieve the requirements in WAC 480-100-610 (4) (c); the description should include, but is not limited to:

(i) The long-term strategy and interim steps the utility will take to equitably distribute benefits and reduce burdens for highly impacted communities and vulnerable populations; and

(ii) The estimated degree to which benefits will be equitably distributed and burdens reduced over the planning horizon(());

((h)) (i) Assess the environmental health impacts to highly impacted communities;

((i)) (j) Analyze and consider combinations of distributed energy resource costs, benefits, and operational characteristics including ancillary services(()) to meet system needs; and

((j)) (k) Incorporate the social cost of greenhouse gas emissions as a cost adder as specified in RCW 19.280.030(3).

(12) **Clean energy action plan (CEAP).** The utility must develop a ((ten-year)) 10-year clean energy action plan for implementing RCW 19.405.030 through 19.405.050. The CEAP must:

(a) Be at the lowest reasonable cost;

(b) Identify and be informed by the utility's ((ten-year)) 10-year cost-effective conservation potential assessment as determined under RCW 19.285.040;

(c) Identify how the utility will meet the requirements in WAC 480-100-610 (4)(c) including, but not limited to:

(i) Describing the specific actions the utility will take to equitably distribute benefits and reduce burdens for highly impacted communities and vulnerable populations;

(ii) Estimating the degree to which such benefits will be equitably distributed and burdens reduced over the CEAP's ((ten-year)) 10-year horizon; and

(iii) Describing how the specific actions are consistent with the long-term strategy described in ((WAC 480-100-620 (11)(g).)) subsection (11)(h) of this section;

(d) Establish a resource adequacy requirement;

(e) Identify the potential cost-effective demand response and load management programs that may be acquired;

(f) Identify renewable resources, nonemitting electric generation, and distributed energy resources that may be acquired and evaluate how each identified resource may reasonably be expected to contribute to meeting the utility's resource adequacy requirement;

(g) Identify any need to develop new, or to expand or upgrade existing, bulk transmission and distribution facilities;

(h) Identify the nature and possible extent to which the utility may need to rely on an alternative compliance option identified under RCW 19.405.040 (1)(b), if appropriate; and

(i) Incorporate the social cost of greenhouse gas emissions as a cost adder as specified in RCW 19.280.030(3).

(13) **Avoided cost and nonenergy impacts.** The IRP must include an analysis and summary of the avoided cost estimate for energy, capacity, transmission, distribution, and greenhouse gas emissions costs. The utility must list nonenergy costs and benefits addressed in the IRP and should specify if they accrue to the utility, customers, participants, vulnerable populations, highly impacted communities, or the general public. The utility may provide this content as an appendix.

(14) **Data disclosure.** The utility must include the data input files made available to the commission in native format per RCW 19.280.030 (10)(a) and (b) and in an easily accessible format as an appendix to the IRP. For filing confidential information, the utility may designate information within the data input files as confidential, provided that the information and designation meet the requirements of WAC 480-07-160.

(15) **Information relating to purchases of electricity from qualifying facilities.** Each utility must provide information and analysis

that it will use to inform its annual filings required under chapter 480-106 WAC. The detailed analysis must include, but is not limited to, the following components:

(a) A description of the methodology used to calculate estimates of the avoided cost of energy, capacity, transmission, distribution, and emissions averaged across the utility; and

(b) Resource assumptions and market forecasts used in the utility's schedule of estimated avoided cost required in WAC 480-106-040 including, but not limited to, cost assumptions, production estimates, peak capacity contribution estimates and annual capacity factor estimates.

(16) **Report of substantive changes.** The IRP must include a summary of substantive changes to modeling methodologies or inputs that result in changes to the utility's resource need, as compared to the utility's previous IRP.

(17) **Summary of public comments.** The utility must provide a summary of public comments received during the development of its IRP and the utility's responses, including whether issues raised in the comments were addressed and incorporated into the final IRP as well as documentation of the reasons for rejecting any public input. The utility may include the summary as an appendix to the final IRP. Comments with similar content or input may be consolidated with a single utility response.

[Statutory Authority: RCW 80.01.040, 80.04.160, and chapters 80.28, 19.280, and 19.405 RCW. WSR 21-02-022 (Dockets UE-191023 and UE-190698, General Order 601), § 480-100-620, filed 12/28/20, effective 12/31/20.]

AMENDATORY SECTION (Amending WSR 21-02-022, filed 12/28/20, effective 12/31/20)

WAC 480-100-625 Integrated resource plan development and timing.

(1) **Timing.** Unless otherwise ordered by the commission, each electric utility must file an integrated resource plan (IRP) with the commission by January 1, 2021, and every four years thereafter.

(2) **IRP work plan.** No later than ((fifteen)) 15 months prior to the due date of its IRP, the utility must file a work plan that includes advisory group input and outlines the content of the IRP and expectations for the subsequent two-year progress report. The utility must include the following in its work plan:

(a) The methods for assessing potential resources;

(b) A proposed schedule of meetings for the utility's resource planning advisory group and equity advisory group, as established in WAC 480-100-655 (1)(b), for the IRP;

(c) A list of significant topics, consistent with WAC 480-100-620, that will be discussed at each advisory group meeting for the IRP;

(d) The date the draft IRP will be filed with the commission;

(e) The date the final IRP will be filed;

(f) A link to the utility's website, updated in a timely manner, to which the utility posts and makes publicly available information related to the IRP, including information outlined in subsection (5) of this section;

(g) If the utility anticipates significant changes in the workplan, it must file an updated workplan.

(3) **Draft IRP.** No later than four months prior to the due date of the final IRP, the utility must file its draft IRP with the commission. At minimum, the draft IRP must include the preferred portfolio, CEAP, and supporting analysis, and to the extent practicable all scenarios, sensitivities, appendices, and attachments.

(a) The commission will hear public comment on the draft IRP at an open meeting scheduled after the utility files its draft IRP. The commission will accept public comments electronically and in any other available formats, as outlined in the commission's notice for the open public meeting and opportunity to comment.

(b) The utility must file with the commission completed presentation materials concerning the draft IRP at least five business days prior to the open meeting.

(4) **Two-year progress report.** At least every two years after the utility files its IRP, beginning January 1, 2023, the utility must file a two-year progress report.

(a) In this report, the utility must update its:

(i) Load forecast;

(ii) Demand-side resource assessment, including a new conservation potential assessment;

(iii) Resource costs; and

(iv) The portfolio analysis and preferred portfolio.

(b) The progress report must include other updates that are necessary due to changing state or federal requirements, or significant changes to economic or market forces.

(c) The progress report must also update for any elements found in the utility's current clean energy implementation plan, as described in WAC 480-100-640.

(5) **Publicly available information.** The utility must make the following information publicly available on its website:

(a) Meeting summaries and materials for advisory group meetings, including materials for future meetings;

(b) A current schedule of advisory group meetings and significant topics to be covered, actively updated by the company and changes highlighted;

(c) Information on how members of the public may participate in advisory group meetings; and

(d) Advisory group comments about the IRP and its development received to date, including responses communicating how the subject of the input was considered or used. Comments with similar content or input may be consolidated with a single utility response.

[Statutory Authority: RCW 80.01.040, 80.04.160, and chapters 80.28, 19.280, and 19.405 RCW. WSR 21-02-022 (Dockets UE-191023 and UE-190698, General Order 601), § 480-100-625, filed 12/28/20, effective 12/31/20.]

AMENDATORY SECTION (Amending WSR 21-02-022, filed 12/28/20, effective 12/31/20)

WAC 480-100-630 Integrated resource planning advisory groups.

(1) The utility must demonstrate and document how it considered input from advisory group members in the development of its IRP and two-year

progress report. Examples of how the utility may incorporate advisory group input include using modeling scenarios, sensitivities, and assumptions advisory group members proposed and using data and information supplied by advisory group members as inputs to plan development. As part of this process and consistent with WAC 480-100-625(5), the utility must communicate to advisory group members about whether and how the utility used their input in its analysis and decision making, including explanations for why the utility did not use an advisory group member's input.

(2) The utility must make available completed presentation materials for each advisory group meeting at least three business days prior to the meeting. The utility may update materials as needed.

(3) The utility must make all ((ef)) its data inputs and files used to develop its IRP available to the commission in native file format, per RCW 19.280.030 (10)(a) and (b), and in an easily accessible format. The utility may make confidential information available by providing it to the commission pursuant to WAC 480-07-160. The utility should minimize its designation of information in the IRP as confidential. Nonconfidential contents of the IRP, two-year progress report, and supporting documentation as well as nonconfidential data inputs and files must be available for advisory group member review in an easily accessible format upon request. Nothing in this subsection limits the protection of records containing commercial information under RCW 80.04.095.

[Statutory Authority: RCW 80.01.040, 80.04.160, and chapters 80.28, 19.280, and 19.405 RCW. WSR 21-02-022 (Dockets UE-191023 and UE-190698, General Order 601), § 480-100-630, filed 12/28/20, effective 12/31/20.]

AMENDATORY SECTION (Amending WSR 21-02-022, filed 12/28/20, effective 12/31/20)

WAC 480-100-640 Content of a clean energy implementation plan (CEIP). (1) **Filing requirements - General.** Unless otherwise ordered by the commission, each electric utility must file with the commission a CEIP by October 1, 2021, and every four years thereafter. The CEIP describes the utility's plan for making progress toward meeting the clean energy transformation standards((r)) and is informed by the utility's clean energy action plan. The utility may not rely on retained NPAs toward primary compliance in its CEIP, consistent with WAC 480-100-650 (1)(a). The utility may not rely on retained NPAs in any way in its CEIP, consistent with WAC 480-100-650(2). The information and documents described in each subsection below must be included in each CEIP.

(2) **Interim targets.**

(a) Each utility must propose a series of interim targets that:

(i) Demonstrate how the utility will make reasonable progress toward meeting the standards identified in WAC 480-100-610 (2) and (3); and

(ii) Are consistent with WAC 480-100-610(4)((, and)).

((iii)) (b) Each utility must propose interim targets in the form of the percent of forecasted retail sales of electricity supplied by nonemitting and renewable resources prior to 2030 and from 2030 through 2045.

((b)) (c) The utility must include the utility's percentage of retail sales of electricity supplied by nonemitting and renewable resources in 2020 in the first CEIP it files.

((e)) (d) Each interim target must be informed by the utility's historic performance under median water conditions.

(3) **Specific targets.**

(a) Each utility must propose specific targets for energy efficiency, demand response, and renewable energy.

(i) The energy efficiency target must encompass all other energy efficiency and conservation targets and goals the commission requires the utility to meet. The specific energy efficiency target must be described in the utility's biennial conservation plan required in chapter 480-109 WAC. The utility must provide forecasted distribution of energy and nonenergy costs and benefits.

(ii) The utility must provide proposed program details, program budgets, measurement and verification protocols, target calculations, and forecasted distribution of energy and nonenergy costs and benefits for the utility's demand response target.

(iii) The utility must propose the renewable energy target as the percent of retail sales of electricity supplied by renewable resources and must provide details of renewable energy projects or programs, program budgets as applicable, and forecasted distribution of energy and nonenergy costs and benefits.

(b) The utility must provide a description of the technologies, data collection, processes, procedures, and assumptions the utility used to develop the targets in this subsection. The utility must make data input files that are used to determine relevant targets available in native format and in an easily accessible format as an appendix.

(4) **Customer benefit data.** Each CEIP must:

(a) Identify highly impacted communities using the cumulative impact analysis pursuant to RCW 19.405.140 combined with census tracts at least partially in Indian country;

(b) Identify vulnerable populations based on adverse socioeconomic factors and sensitivity factors developed through the advisory group process and public participation plan described in WAC 480-100-655, describing and explaining any changes from the utility's most recently approved CEIP; and

(c) Include proposed or updated customer benefit indicators and associated weighting factors related to WAC 480-100-610 (4) (c) including, at a minimum, one or more customer benefit indicators associated with energy benefits, nonenergy benefits, reduction of burdens, public health, environment, reduction in cost, reduction in risk, energy security, and resiliency. Customer benefit indicators and weighting factors must be developed consistent with the advisory group process and public participation plan described in WAC 480-100-655. The utility should describe and explain any changes in customer benefit indicators or weighting factors from its most recently approved CEIP.

(5) **Specific actions.** Each CEIP must include the specific actions the utility will take over the implementation period. The specific actions must meet and be consistent with the clean energy transformation standards and be based on the utility's clean energy action plan and interim and specific targets. Each CEIP must present the specific actions in a tabular format that provides the following information for each specific action:

(a) The general location, if applicable, proposed timing, and estimated cost of each specific action or remaining resource need, including whether the resource will be located in highly impacted com-

munities, will be governed by, serve, or otherwise benefit highly impacted communities or vulnerable populations in part or in whole;

(b) Metrics related to resource adequacy including contributions to capacity or energy needs; and

(c) Customer benefit indicator values, or a designation as nonapplicable, for every customer benefit indicator described in subsection (4) (c) of this section.

(6) **Narrative description of specific actions.** The CEIP must describe how the specific actions:

(a) Demonstrate progress toward meeting the standards identified in WAC 480-100-610 (2) and (3) ~~((7))~~.

(b) Demonstrate consistency with the standards identified in WAC 480-100-610 (4) including, but not limited to:

(i) An assessment of current benefits and burdens on customers, by location and population, and the projected impact of specific actions on the distribution of customer benefits and burdens during the implementation period ~~((7))~~.

(ii) A description of how the specific actions in the CEIP mitigate risks to highly impacted communities and vulnerable populations and are consistent with the longer-term strategies and actions described in the utilities most recent IRP and CEAP as required by WAC 480-100-620 (11) ~~((7g))~~ (h) and (12) (c).

(c) Are consistent with the proposed interim and specific targets ~~((7))~~.

(d) Are consistent with the utility's integrated resource plan ~~((7))~~.

(e) Are consistent with the utility's resource adequacy requirements, including a narrative description of how the resources identified in the most recent resource adequacy assessment conducted or adopted by the utility demonstrates that the utility will meet its resource adequacy standard ~~((7))~~ and ~~((7))~~.

(f) Demonstrate how the utility is planning to meet the clean energy transformation standards at the lowest reasonable cost including, but not limited to:

(i) A description of the utility's approach to identifying the lowest reasonable cost portfolio of specific actions that meet the requirements of (a) through (e) of this subsection, including a description of its methodology for weighing considerations in WAC 480-100-610 (4);

(ii) A description of the utility's methodology for selecting the investments and expenses it plans to make over the next four years that are directly related to the utility's compliance with the clean energy transformation standards, consistent with RCW 19.405.050 (3) (a), and a demonstration that its planned investments represent a portfolio approach to investment plan optimization; and

(iii) Supporting documentation justifying each specific action identified in the CEIP.

(7) **Projected incremental cost.** Each CEIP must include a projected incremental cost as outlined in WAC 480-100-660 (4).

(8) **Public participation.** Each CEIP must detail the extent of advisory group and other public participation in the development of the CEIP as described in WAC 480-100-655 including, but not limited to, ~~((the))~~ a summary of advisory group member comments described in WAC 480-100-655 (1) (i).

(9) **Alternative compliance.** The utility must describe any plans it has to rely on alternative compliance mechanisms as described in RCW 19.405.040 (1) (b).

(10) **Early action coal credit.** If the utility proposes to take the early action compliance credit authorized in RCW 19.405.040(11), the utility must satisfy the requirements in that statutory provision and demonstrate that the proposed action constitutes early action by presenting the analysis in subsection (6) of this section both with and without the proposed early action. The utility must compare both the proposed early action and the alternative against the same proposed interim and specific targets.

(11) **Biennial CEIP update.** The utility must make a biennial CEIP update filing on or before November 1st of each odd-numbered year that the utility does not file a CEIP. The CEIP update may be limited to the biennial conservation plan requirements under chapter 480-109 WAC. The utility must file its biennial CEIP update in the same docket as its most recently filed CEIP and include an explanation of how the update will modify targets in its CEIP. In addition to its proposed biennial conservation plan, the utility may file in the update other proposed changes to the CEIP as a result of the integrated resource plan progress report.

[Statutory Authority: RCW 80.01.040, 80.04.160, and chapters 80.28, 19.280, and 19.405 RCW. WSR 21-02-022 (Dockets UE-191023 and UE-190698, General Order 601), § 480-100-640, filed 12/28/20, effective 12/31/20.]

AMENDATORY SECTION (Amending WSR 21-02-022, filed 12/28/20, effective 12/31/20)

WAC 480-100-650 Reporting and compliance. (1) Greenhouse gas neutrality resource portfolio performance standards and compliance. A utility must demonstrate how its resource acquisition, resource retirement, and continued investment in and operation of existing resources serve a minimum of 80 percent of its retail electric load, or other minimum percentage established by the commission, with renewable or nonemitting electricity in each compliance period beginning January 1, 2030. Using electricity for compliance under RCW 19.405.040(1) means that a utility:

(a) May not account for the ability to apply retained NPAs toward primary compliance under (c) of this subsection when developing its long-range integrated resource plan solution under WAC 480-100-620 and its CEIP under WAC 480-100-640 and must have models, scenarios, projections, and other information and analysis within the utility's IRP and CEIP that are consistent with this requirement.

(b) May not account for the ability to apply retained NPAs toward primary compliance under (c) of this subsection or with its interim or other targets in making decisions to acquire or invest in resources with a contract term or useful life greater than two years.

(c) May report retained NPAs toward primary compliance with interim or other targets under this section or WAC 480-100-665, but only if the utility has complied with (a) and (b) of this subsection and subsection (6) of this section, and if applicable subsection (2) of this section during the period under review.

(2) One hundred percent renewable and nonemitting resource portfolio performance standards and compliance. A utility must demonstrate that it is supplying all its retail electric service obligations with renewable and nonemitting resources. To meet this requirement, the

utility must demonstrate that it has secured transmission rights or assets to provide feasible transmission for renewable or nonemitting resources to serve its retail electric service obligations. A utility may not rely on retained NPAs for planning, acquisition, reporting or in any other way under RCW 19.405.050(1). A utility's demonstration of compliance with RCW 19.405.050(1) must include at a minimum an analysis of its retail electric service obligations on an hourly basis.

(3) Clean energy compliance report. Unless otherwise ordered by the commission, each electric utility must file a clean energy compliance report with the commission by July 1, 2026, and at least every four years thereafter. The report must ~~((demonstrate whether and how))~~:

(a) Demonstrate whether and how the utility met its interim targets ~~((+))~~ .

(b) Demonstrate whether and how the utility met its specific targets ~~((+))~~ .

(c) Demonstrate whether and how the specific actions the utility took made progress toward meeting the clean energy transformation standards at the lowest reasonable cost ~~((+))~~ .

(d) Demonstrate whether and how the utility met its statutory obligations under RCW 19.405.040(1) and 19.405.050(1) through the acquisition of the electricity and associated RECs or nonpower attributes. This requires the utility to demonstrate that the electricity the utility reports for compliance is:

(i) From a generating facility located within the utility's service area or balancing authority area; or

(ii) Acquired by the utility at one of the following points of delivery:

(A) The transmission or distribution system of an electric utility;

(B) The transmission system of the Bonneville Power Administration;

(C) The transmission system of any entity that is a participant in a centralized organized market located in the Western Interconnection in which the electric utility is a participant; or

(D) Another point of delivery designated by the electric utility for the purpose of subsequent delivery to the electric utility.

(e) Demonstrate whether and how the specific actions the utility took are consistent with the requirements in WAC 480-100-610 (4) (c) including, but not limited to:

(i) Providing updated customer benefit indicator values;

(ii) An analysis that the distribution of benefits and reductions of burdens have accrued or will reasonably accrue to intended customers, including highly impacted communities and vulnerable populations.

((+e+)) (f) Provide a description of the utility's equity advisory group process, customer engagement and outcomes, and how the utility's efforts are consistent with the requirements in WAC 480-100-655 for the development or update of customer benefit indicators related to WAC 480-100-610 (4) (c) ((+)) .

((+f+)) (g) Include the actual incremental cost of compliance as required in WAC 480-100-660(5) ((+)) .

((+g+)) (h) Include all of the information found in the annual progress report as described in subsection ((+3+)) (4) of this section for the fourth year of the CEIP ~~((+))~~ .

((+h+)) (i) Include a summary of the data in the annual progress reports described in subsection ((+3+)) (4) of this section ~~((+))~~ .

((i)) (j) Document the use of any alternative compliance options as described in RCW 19.405.040 (1)(b), or any request for a temporary exemption per RCW 19.405.090(3)((d)).

((j)) (k) Include a description of the public participation opportunities the utility provided and the feedback the utility received during the implementation period, including whether and how public participation influenced the utility's decisions and actions((; and)).

((k)) (l) Include the data input files made available to the commission in native format and in an easily accessible format as an appendix.

((2)) (4) Clean energy compliance report review process.

(a) Interested persons may file written comments with the commission regarding the utility's clean energy compliance report within ((sixty)) 60 days of the utility's filing unless the commission states otherwise.

(b) The commission may review clean energy compliance reports through the commission's open public meeting process, as described in chapter 480-07 WAC.

(c) After completing its review of the utility's clean energy compliance report, the commission will determine whether the utility met its specific and interim targets, and whether the utility made sufficient progress toward meeting the clean energy transformation standards.

((3)) (5) Annual clean energy progress reports. On or before July 1st of each year beginning in 2023, other than in a year in which the utility files a clean energy compliance report, the utility must file with the commission, in the same docket as its most recently filed CEIP, an informational annual clean energy progress report regarding its progress in meeting its targets during the preceding year. The annual clean energy progress report must include, but is not limited to:

(a) Beginning July 1, 2027, and each year thereafter, an attestation for the previous calendar year that the utility did not use any coal-fired resource as defined in this chapter to serve Washington retail electric customer load((;)).

(b) Conservation achievement in megawatts, first-year megawatt-hour savings, and projected cumulative lifetime megawatt-hour savings((;)).

(c) Demand response program achievement and demand response capability in megawatts and megawatt hours((;)).

(d) Renewable resource capacity in megawatts, and renewable energy usage in megawatt hours and as a percentage of electricity supplied by renewable resources((;)).

(e) All renewable energy credits and the program or obligation for which they were used (e.g., voluntary renewable programs, renewable portfolio standard, clean energy transformation standards)((;)).

(f) Verification and documentation of the retirement of renewable energy credits for all electricity from renewable resources used to comply with the requirements of RCW 19.405.040, 19.405.050, a specific target, or an interim target((;)) except for electricity purchased from Bonneville Power Administration, which may be used to comply with these requirements without a renewable energy credit until January 1, 2029, as long as the nonpower attributes of the renewable energy are tracked through contract language((;)).

(g) Nonemitting resource capacity in megawatts, and nonemitting energy usage in megawatt hours and as a percentage of total electricity supplied by nonemitting energy((;)).

(h) The utility's greenhouse gas content calculation pursuant to RCW 19.405.070((~~;~~)).

(i) An electronic link to the utility's most recently filed fuel mix disclosure report as required by RCW 19.29A.140((~~;~~)).

(j) Total greenhouse gas emissions in metric tons of CO₂e((~~;~~)).

(k) Demonstration of ownership of nonpower attributes for nonemitting generation using attestations of ownership and transfer by properly authorized representatives of the generating facility, all intermediate owners of the nonemitting electric generation, and an appropriate company executive of the utility; the utility may not transfer ownership of the nonpower attributes after claiming them in any compliance report((~~;~~ and)).

(l) Other information the company agreed to or was ordered to report in the most recently approved CEIP or biennial CEIP update.

(6) **Data and contract reporting.** Each utility must file its annual clean energy progress report based on an analysis that identifies and considers the source and characteristics of the electricity a utility claims to meet compliance obligations under WAC 480-100-610, including electricity that is produced, purchased, sold, or exchanged.

(a) Unless otherwise ordered by the commission, the analysis and supporting data provided in the filing must include data in an hourly format for:

(i) Total Washington retail sales.

(ii) Retail sales for customers participating in a voluntary renewable energy purchase program in alignment with RCW 19.405.020 (36) (b).

(iii) Total electricity production for all renewable and nonemitting generation owned, contracted, or controlled by the utility.

(iv) Generation from qualifying facilities as described in RCW 19.405.020 (36) (a).

(v) All electricity sold or transferred for all bundled sales of electricity from renewable and nonemitting sources. For the purposes of this subsection, bundled electricity is electricity that is sold with all its nonpower attributes in the same transaction.

(vi) All electricity sales in which the electricity was sold by that utility in a wholesale market sale without its associated nonpower attributes.

(b) Unless otherwise ordered by the commission, the utility must include in its filing the following:

(i) Total monthly megawatt-hours of sales, purchases, and exchanges by counter party of electricity sales in which the electricity was sold by that utility in a wholesale market sale without its associated nonpower attributes. Any contract in which the utility sells electricity in a wholesale market sale without its associated nonpower attributes must include terms stating the seller is not transferring any of the nonpower attributes and the buyer may not represent in any form that the electricity has any nonpower attributes associated with it and that the buyer must include such provision in any sale of the electricity in any subsequent sale it makes.

(ii) Total monthly megawatt-hours of sales, purchases, and exchanges of bundled electricity from renewable or nonemitting generation. For the purposes of this subsection, bundled electricity is electricity that is sold with all of its nonpower attributes in the same transaction.

(iii) All purchase contracts longer than one month that source the electricity delivered from coal fueled generation.

(iv) Total monthly purchases and sales of unbundled RECs and other nonpower attributes. Based on the statutory definition of unbundled REC under RCW 19.405.020(38), a REC that meets the definition of a retained NPA under WAC 480-100-605 that is subsequently sold becomes an unbundled REC. Any unbundled REC reported for compliance must meet the requirements under (c) of this subsection.

(v) Beginning January 1, 2026, all existing or new purchase contracts longer than one month with documentation that none of the electricity delivered is sourced from coal fueled generation.

(vi) Any data provided to the Western power pool's resource adequacy program or its successor.

(c) A utility may use an unbundled REC as an alternative compliance option, as provided in RCW 19.405.040 (1) (b), only if the utility demonstrates that there is no double counting of any nonpower attribute associated with that REC. This subsection sets only the minimum requirements necessary to demonstrate that no double counting has occurred. The commission may require the utility to produce other evidence or take specific actions as the commission determines necessary to ensure that there is no double counting of nonpower attributes.

(i) Except as provided in (c)(iii) of this subsection, a utility may use an unbundled REC for alternative compliance only if the utility demonstrates:

(A) The associated electricity was sold, delivered, or transferred without fuel sources or nonpower attributes and under a contract or transaction term expressly stating the fuel source or nonpower attributes are not included; and

(B) The associated electricity was not delivered, reported, or claimed as a zero-emission specified source or assigned the emissions rate of the renewable generating facility under a greenhouse gas (GHG) program.

(ii) A utility's demonstration under this section may be met by documentation that the entity providing the unbundled REC:

(A) Provides contract, confirmation, or other transaction terms that comply with the requirements of (c)(i)(A) and (B) of this subsection;

(B) Was a party to or otherwise has knowledge of the transaction in which the associated electricity was sold or transferred and attests to (c)(i)(A) and (B) of this subsection; or

(C) Obtained the unbundled REC from an entity that attests that it and all previous owners of the REC transferred the REC using transaction terms complying with the requirements of (c)(ii)(A) or (B) of this subsection.

(iii) To claim and retire an unbundled REC for alternative compliance where the Washington-eligible RECs were created by renewable electricity marketed by the Bonneville Power Administration a utility must demonstrate the REC was not associated with electricity from a system sale from the Bonneville Power Administration directly into a state with a GHG program and to an entity regulated by the state greenhouse gas program. The RECs are calculated based on the same vintage year as the year in which the electricity was imported to the state with the greenhouse gas program.

(iv) For the purposes of (c) of this subsection, "greenhouse gas program" includes any governmental program outside of Washington that caps or limits greenhouse gas emissions or requires the purchase, surrender, or retirement of greenhouse gas allowances if the scope of the greenhouse gas program includes electricity imported from outside the

governmental jurisdiction and does not require the retirement of RECs for such imported electricity.

(d) For the purposes of reporting and compliance, the storage of electricity has the following impacts:

(i) The eligibility of renewable or nonemitting electricity is not affected by the use of storage resources.

(ii) Except for storage resources located on the customer side of a retail meter, any electrical consumption or loss resulting from the charging, holding, and discharging of storage resources is not considered retail electric load as defined in RCW 19.405.020(36).

(iii) For reporting and compliance with subsections (1) (a), (b), and (2) of this section, any electrical consumption or loss resulting from the charging, holding, and discharging of storage resources located on the customer side of a retail meter is considered retail electric load for the purpose of compliance with chapter 19.405 RCW.

(7) Commission staff information requests. Nothing in this rule affects the utility's obligation to provide any additional information or data requested by commission staff.

[Statutory Authority: RCW 80.01.040, 80.04.160, and chapters 80.28, 19.280, and 19.405 RCW. WSR 21-02-022 (Dockets UE-191023 and UE-190698, General Order 601), § 480-100-650, filed 12/28/20, effective 12/31/20.]

AMENDATORY SECTION (Amending WSR 21-02-022, filed 12/28/20, effective 12/31/20)

WAC 480-100-655 Public participation in a clean energy implementation plan (CEIP). (1) **Advisory groups.** The utility must demonstrate and document how it considered input from advisory group members in the development of its CEIP and biennial CEIP update. Examples of how the utility may incorporate advisory group input include: Using modeling scenarios, sensitivities, and assumptions advisory group members proposed and using data and information supplied by advisory group members as inputs to plan development. As part of this process and consistent with (i) of this subsection, the utility must communicate to advisory group members about whether and how the utility used their input in its analysis and decision-making, including explanations for why the utility did not use an advisory group member's input.

(a) The utility must involve all advisory groups in the development of its CEIP and its biennial CEIP update, including the equity advisory group identified in (b) of this subsection((†)).

(b) The utility must maintain and regularly engage an external equity advisory group to advise the utility on equity issues including, but not limited to, vulnerable population designation, equity customer benefit indicator development, data support and development, and recommended approaches for the utility's compliance with WAC 480-100-610 (4)(c)(i). The utility must encourage and include the participation of environmental justice and public health advocates, tribes, and representatives from highly impacted communities and vulnerable populations in addition to other relevant groups((†)).

(c) The utility must convene advisory groups, with reasonable advance notice, at regular meetings open to the public during the planning process. A utility must notify advisory groups of company and

commission public meetings scheduled to address its CEIP and biennial CEIP update((†)).

(d) Engaging with advisory groups for the purposes of developing the CEIP does not relieve the utility of the obligation to continue to convene and engage these groups for their individual topical duties. This section does not supersede existing rules related to those groups((†)).

(e) Nothing in this section limits the utility from convening and engaging public advisory groups on other topics((†)).

(f) Participation in an advisory group does not restrict groups and individuals from commenting on CEIP filings before the commission((†)).

(g) The utility must make available completed presentation materials for each advisory group meeting at least three business days prior to the meeting. The utility may update materials as needed;

(h) The utility must make all ((ef)) its data inputs and files used to develop its CEIP available to the commission in native file format and in an easily accessible format. The utility may make confidential information available by providing it to the commission pursuant to WAC 480-07-160. The utility should minimize its designation of information in the CEIP as confidential. Nonconfidential contents of the CEIP, biennial update, and supporting documentation as well as nonconfidential data inputs and files must be available for advisory group review in an easily accessible format upon request. Nothing in this subsection limits the protection of records containing commercial information under RCW 80.04.095((†)).

(i) As part of the filing of its CEIP and biennial update with the commission, the utility must provide a summary of advisory group comments received during the development of its CEIP and biennial update and the utility's responses, including whether issues raised in the comments were addressed and incorporated into the final CEIP as well as documentation of the reasons for rejecting public input. The utility must include the summary as an appendix to the final CEIP. Comments with similar content or input may be consolidated with a single utility response.

(2) **Participation plan and education.** The utility must involve advisory groups in developing the timing and extent of meaningful and inclusive public participation throughout the development and duration of the CEIP, including outreach and education serving vulnerable populations and highly impacted communities. On or before May 1st of each odd-numbered year, the utility must file with the commission a plan that outlines its schedule, methods, and goals for public participation and education both during the development of its CEIP and throughout the implementation of the plan. The utility must include the following in its participation plan:

(a) Timing, methods, and language considerations for seeking and considering input from:

(i) Vulnerable populations and highly impacted communities for the creation of or updates to customer benefit indicators and weighting factors for the utility's compliance with WAC 480-100-610

(4) (c) (i); and

(ii) All customers, including vulnerable populations and highly impacted communities, for the creation of, or updates to, customer benefit indicators and weighting factors for the utility's compliance with WAC 480-100-610 (4) (c) (ii) and (iii).

(b) Identification of barriers to public participation including, but not limited to, language, cultural, economic, or other factors, and strategies for reducing barriers to public participation((~~r~~)).

(c) Plans to provide information and data in broadly understood terms through meaningful participant education((~~r~~)).

(d) A proposed schedule of public meetings or engagement, including advisory group meetings((~~r~~)).

(e) A proposed list of significant topics that will be discussed((~~r~~)).

(f) The date the utility will file the final CEIP with the commission((~~r~~ and)).

(g) A link to a website accessible to the public and managed by the utility, to which the utility posts and makes publicly available the following information:

(i) Meeting summaries and materials for all relevant meetings, including materials for future meetings;

(ii) A current schedule of advisory group meetings and significant topics to be covered;

(iii) Information on how the public may participate in CEIP development; and

(iv) Final plans and biennial CEIP updates posted within ((thirty)) 30 days of final commission action.

(3) **Customer notices.** Within ((thirty)) 30 days of filing the utility's CEIP, the utility must inform customers of the filing and requirements under chapter 19.405 RCW, briefly summarize the utility's CEIP, and inform customers of how they may comment on the utility's filing. The notice must include:

(a) The date the notice is issued;

(b) The utility's name and address;

(c) A website link that navigates to the full CEIP;

(d) A statement that the commission has the authority to approve the CEIP, with or without conditions, or reject the CEIP;

(e) A description of how customers may contact the utility if they have specific questions or need additional information about the CEIP; and

(f) Public involvement language pursuant to WAC 480-100-194

(4) (j).

[Statutory Authority: RCW 80.01.040, 80.04.160, and chapters 80.28, 19.280, and 19.405 RCW. WSR 21-02-022 (Dockets UE-191023 and UE-190698, General Order 601), § 480-100-655, filed 12/28/20, effective 12/31/20.]

AMENDATORY SECTION (Amending WSR 21-02-022, filed 12/28/20, effective 12/31/20)

WAC 480-100-660 Incremental cost of compliance. (1) **Incremental cost methodology.** To determine the incremental cost of the actions a utility takes to comply with RCW 19.405.040 and 19.405.050, the utility must compare its lowest reasonable cost portfolio to the alternative lowest reasonable cost and reasonably available portfolio. The utility should use a portfolio optimization model, such as the one used in its most recent ((integrated resource plan)) IRP, as the basis for calculating the alternative lowest reasonable cost and reasonably available portfolio to show the difference in portfolio choices and

investment needs between the two portfolios, and demonstrate which investments and expenses are directly attributable costs to meet the requirements of RCW 19.405.040 and 19.405.050.

(a) The utility may include in its documentation of both portfolios those investments and expenses that are not reflected in the portfolio optimization if the utility demonstrates that the investment or expense could not reasonably have been reflected in the portfolio optimization model.

(b) If the portfolios provided are the result of a model, the utility must provide a fully linked and electronically functional copy of that model as part of its workpapers.

(c) The utility may propose an alternative incremental cost methodology if it can demonstrate that it meets the requirements of a methodology as described in RCW 19.405.060 (3) and (5), and that it will comply with RCW 19.405.040 and 19.405.050 at the lowest reasonable cost.

(2) **Incremental cost calculation.** The utility must calculate the average annual threshold amount for determining eligibility for reliance on RCW 19.405.060(3) as a means of compliance. The average annual threshold amount is equal to a two percent increase over the utility's weather-adjusted sales revenue to customers from each previous year, divided by the number of years in the period. For a period consisting of four years, the mathematical formula for the annual threshold amount is:

$$\text{Annual Threshold Amount} = \frac{(WASR_0 \times 2\% \times 4) + (WASR_1 \times 2\% \times 3) + (WASR_2 \times 2\% \times 2) + (WASR_3 \times 2\%)}{4}$$

(3) **Directly attributable costs.** An investment or expense is directly attributable only if all ((~~of~~)) the following conditions are satisfied:

(a) The utility made the investment or incurred the expense during the implementation period((~~+~~)).

(b) The investment or expense is part of the lowest reasonable cost portfolio that results in compliance with RCW 19.405.040 and 19.405.050((~~+~~)).

(c) The investment or expense is additional to the costs that the utility would incur for the alternative lowest reasonable cost and reasonably available portfolio((~~+~~and)).

(d) The investment or expense is not required to meet any statutory, regulatory, or contractual requirement or any provision of chapter 19.405 RCW other than RCW 19.405.040 or 19.405.050.

(4) **Projected incremental cost.** The utility must file projected incremental cost estimates in each CEIP using the methodology described in subsection (1) of this section and using projected weather-adjusted sales revenue in the calculation in subsection (2) of this section to estimate the average annual threshold amount for the implementation period. The utility must support the projections with workpapers, models, and associated calculations, and must ((provide the following information)):

(a) ((Identification of)) Identify all investments and expenses that the utility plans to make during the period in order to comply with the requirements of RCW 19.405.040 and 19.405.050((~~+~~)).

(b) ((Demonstration)) Demonstrate that the investments and expenses identified in (a) of this subsection are directly attributable to actions necessary to comply with, or make progress towards, the requirements of RCW 19.405.040 and 19.405.050((~~+~~and))).

(c) Provide the expected cost of the utility's planned activities and the expected cost of the alternative lowest reasonable cost and reasonably available portfolio.

(5) **Reported actual incremental costs.** In each CEIP compliance report as described in WAC 480-100-650, the utility must file the actual incremental costs using the methodology described in subsection (1) of this section and the calculation in subsection (2) of this section. The utility must support its filing by providing the following information:

(a) The actual costs the utility incurred during the implementation period~~((+))~~. Presentation of capital and expense accounts should be reported by Federal Energy Regulatory Commission (FERC) account by year~~((+))~~.

(b) A demonstration that the reported incremental cost is directly attributable to specific actions the utility has taken that were necessary to comply with RCW 19.405.040 and 19.405.050, per subsection (2) of this section~~((+))~~.

(c) Documentation of the cost of the alternative lowest reasonable cost and reasonably available portfolio; the utility must update verifiable and material inputs of this portfolio with the most recent information available~~((+))~~.

(d) If the utility uses the incremental cost compliance option as described in this subsection, a demonstration that during the implementation period the average annual incremental cost of meeting the standards or the interim targets equals or exceeds a two percent annual increase of the investor-owned utility's weather-adjusted electric retail sales revenue to customers for electric operations above the previous year~~((+))~~.

(e) An explanation for the variance between the projected incremental cost in subsection (3) of this section and the actual incremental costs reported in subsection (4) of this section~~((+ and))~~.

(f) Workpapers and calculations supporting the incremental cost calculations.

(6) **Determination of incremental cost of compliance option.**

(a) For any implementation period in which the utility relies on RCW 19.405.060(3) as the basis for compliance with the standard under RCW 19.405.040(1) or 19.405.050(1), the utility must request a determination from the commission when filing its clean energy compliance report, per WAC 480-100-650.

(b) The utility must also provide evidence that, if the utility relied on alternative compliance options allowed under RCW 19.405.040(1)(b) during the applicable period, the utility has maximized investments in renewable resources and nonemitting electric generation before relying on these alternative compliance options.

[Statutory Authority: RCW 80.01.040, 80.04.160, and chapters 80.28, 19.280, and 19.405 RCW. WSR 21-02-022 (Dockets UE-191023 and UE-190698, General Order 601), § 480-100-660, filed 12/28/20, effective 12/31/20.]

AMENDATORY SECTION (Amending WSR 21-02-022, filed 12/28/20, effective 12/31/20)

WAC 480-100-665 Enforcement. (1) **General.** The commission may take enforcement action in response to a utility's failure to comply

with the provisions of chapter 19.405 RCW, this chapter of the commission's rules, or a commission order implementing those requirements.

(2) **Procedure.** The commission may take enforcement action in the following types of proceedings:

(a) **Complaint.** The commission may bring a complaint against the utility pursuant to RCW 80.04.380 and WAC 480-07-300, et seq.

(b) **Penalty assessment.** The commission may assess penalties as provided in RCW 80.04.405 and WAC 480-07-915.

(c) **Other.** The commission may take enforcement action in any proceeding in which the utility's compliance with the provisions of chapter 19.405 RCW, this chapter of the commission's rules, or a commission order implementing those requirements is at issue including, but not limited to, the utility's general rate case.

(3) **Remedies.** The commission may impose any one or a combination of the following remedies for a utility's failure to comply with the provisions of chapter 19.405 RCW, this chapter of the commission's rules, or a commission order implementing those requirements.

(a) **RCW 19.405.090.** For all violations subject to the compliance, enforcement, and penalty provisions of RCW 19.405.090, the commission may require the utility to pay an administrative penalty of ((one hundred dollars)) \$100 multiplied by the applicable megawatt-hour of electric generation used to meet load that is not electricity from a renewable resource or nonemitting electric generation.

(b) For violations of rule or order not subject to RCW 19.405.090, the commission may pursue the following remedies:

(i) **RCW 80.04.380.** The commission may assess penalties of up to ((one thousand dollars)) \$1,000 for each violation. Violation of the same requirement in statute, rule, or commission order are separate and distinct violations, and each day the utility is not in compliance with these requirements is a separate and distinct violation.

(ii) **RCW 80.04.405.** The commission may assess penalties of ((one hundred dollars)) \$100 for each violation. Violation of the same requirement in statute, rule, or commission order are separate and distinct violations, and each day the utility is not in compliance with these requirements is a separate and distinct violation.

(c) **Specific performance.** The commission may order a utility to take specific actions necessary to comply with chapter 19.405 RCW, this chapter of the commission's rules, and commission orders implementing those requirements.

(d) **Customer notification.** If the commission finds a utility in violation of chapter 19.405 RCW, this chapter of the commission's rules, or commission orders implementing those requirements, the commission may order the utility to notify its retail electric customers of the violation in a published form.

(4) **Mitigation.** A utility may request mitigation of, and the commission may mitigate, any administrative penalty as described in RCW 19.405.090(3) or penalty assessment as provided in WAC 480-07-915. Any mitigation the commission grants does not relieve the utility of its obligation to comply with applicable legal requirements or to take specific actions the commission orders.

[Statutory Authority: RCW 80.01.040, 80.04.160, and chapters 80.28, 19.280, and 19.405 RCW. WSR 21-02-022 (Dockets UE-191023 and UE-190698, General Order 601), § 480-100-665, filed 12/28/20, effective 12/31/20.]

WSR 22-07-101

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed March 22, 2022, 2:30 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-15-025.

Title of Rule and Other Identifying Information: WAC 182-504-0015 Washington apple health—Certification periods for categorically needy programs, 182-505-0115 Washington apple health—Eligibility for pregnancy and after-pregnancy-related coverage, 182-505-0117 Washington apple health—Eligibility for pregnant minors, 182-509-0305 MAGI income—Persons subject to the modified adjusted gross income (MAGI) methodology, and 182-514-0263 Non-SSI-related institutional medically needy coverage for pregnant people and people age 20 and younger.

Hearing Location(s): On April 26, 2022, at 10:00 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the health care authority (HCA) continues to hold public hearings virtually without a physical meeting place. This promotes social distancing and the safety of the residents of Washington state. To attend the virtual public hearing, you must register in advance https://zoom.us/webinar/register/WN_zsdIV_bnTFeOWg0-c1_Xmw. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not sooner than April 27, 2022.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by April 26, 2022.

Assistance for Persons with Disabilities: Contact HCA rules coordinator, phone 360-725-1306, fax 360-586-9727, telecommunication[s] relay services 711, email arc@hca.wa.gov, by April 15, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending these rules to align with SSB 5068 and the American Rescue Plan Act of 2021, which extends postpartum coverage through Washington apple health from 60 days to 12 months, beginning with the month after a pregnancy ends. The revised rules allow people to apply for after-pregnancy coverage within 12 months of their last pregnancy date and also allow people to apply who were not on an apple health program during the time they were pregnant.

Reasons Supporting Proposal: The new rules remove an unsafe gap in coverage and will provide birthing parents with access to stable and consistent care that improves maternal and infant health.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160; SSB 5068.

Rule is necessary because of federal law, Public Law No. 117-2 American Rescue Plan Act of 2021.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Melinda Froud, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1408; Implementation and Enforcement: Melissa Rivera, P.O. Box 45534, Olympia, WA 98504-5534, 360-725-1713.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

March 22, 2022

Wendy Barcus
Rules Coordinator

OTS-3524.2

AMENDATORY SECTION (Amending WSR 17-12-017, filed 5/30/17, effective 6/30/17)

WAC 182-504-0015 Washington apple health—Certification periods for categorically needy programs. (1) A certification period is the period of time we determine that you are eligible for a categorically needy (CN) Washington apple health program. Unless otherwise stated in this section, the certification period begins on the first day of the month of application and continues through the end of the last month of the certification period.

(2) For a newborn eligible for apple health, the certification period begins on the child's date of birth and continues through the end of the month of the child's first birthday.

(3) If you are ((a person)) eligible for apple health based on pregnancy, the certification period ((ends)) continues through the last day of the ((month that includes the sixtieth day from the day the pregnancy ends.

((4))) month the pregnancy ends. After-pregnancy coverage begins the first day of the month, following the end of the pregnancy, and ends the last day of the 12th month from the time after-pregnancy coverage began.

(4) If you are newly eligible for apple health coverage and had a pregnancy end within the last 12 months, your certification period for after-pregnancy coverage:

(a) Begins the first day of the month you are eligible; and
(b) Ends the last day of the 12th month following the end of your pregnancy.

(5) If you are eligible for the refugee program, the certification period ends at the end of the eighth month following your date of entry to the United States.

((5))) (6) For all other CN coverage, the certification period is ((twelve)) 12 months.

((6))) (7) If you are a child, eligibility is continuous throughout the certification period regardless of a change in circumstances, unless a required premium (described in WAC 182-505-0225) is not paid for three consecutive months, or you:

- (a) Turn age ((nineteen)) 19;
- (b) Move out-of-state; or
- (c) Die.

((7)) (8) When you turn ((nineteen)) 19, the certification period ends after the redetermination process described in WAC 182-504-0125 is completed, even if the ((twelve)) 12-month period is not over, unless:

(a) You are receiving inpatient services (described in WAC 182-514-0230) on the last day of the month you turn ((nineteen)) 19;

(b) The inpatient stay continues into the following month or months; and

(c) You remain eligible except for turning age ((nineteen)) 19.

((8)) (9) A retroactive certification period is described in WAC 182-504-0005.

((9)) (10) Coverage under premium-based programs included in apple health for kids as described in chapter 182-505 WAC begins no sooner than the month after creditable coverage ends.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 17-12-017, § 182-504-0015, filed 5/30/17, effective 6/30/17. Statutory Authority: RCW 41.05.021, 41.05.160, Public Law 111-148, 42 C.F.R. § 431, 435, and 457, and 45 C.F.R. § 155. WSR 14-16-052, § 182-504-0015, filed 7/29/14, effective 8/29/14. WSR 11-24-018, recodified as § 182-504-0015, filed 11/29/11, effective 12/1/11. Statutory Authority: RCW 74.04.050, 74.04.057, and 74.08.090, and Apple Health for Kids Act (ESHB 2128); 42 U.S.C. 1305; Public Law 111-3 (Children's Health Insurance Program Reauthorization Act of 2009). WSR 11-03-001, § 388-416-0015, filed 1/5/11, effective 2/5/11. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.402, 74.09.470, and 2008 session law. WSR 09-07-086, § 388-416-0015, filed 3/17/09, effective 4/17/09. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.530, 74.09.700, and 2007 c 5. WSR 08-05-018, § 388-416-0015, filed 2/12/08, effective 3/14/08. Statutory Authority: RCW 74.04.050, 74.08.090, 74.09.530, and 74.09.700. WSR 06-24-036, § 388-416-0015, filed 11/30/06, effective 1/1/07. Statutory Authority: RCW 74.08.090, 74.09.530, and 74.09.415. WSR 05-19-031, § 388-416-0015, filed 9/12/05, effective 10/13/05. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 2004 c 54. WSR 04-21-064, § 388-416-0015, filed 10/18/04, effective 11/18/04. Statutory Authority: RCW 74.08.090, 74.09.530, and 2003 c 10. WSR 04-03-019, § 388-416-0015, filed 1/12/04, effective 2/12/04. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090 and 74.09.450. WSR 00-08-002, § 388-416-0015, filed 3/22/00, effective 5/1/00. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-416-0015, filed 7/31/98, effective 9/1/98. Formerly 388-509-0970, 388-521-2105, 388-522-2210 and 388-522-2230.]

OTS-3525.3

AMENDATORY SECTION (Amending WSR 14-16-052, filed 7/29/14, effective 8/29/14)

WAC 182-505-0115 Washington apple health—Eligibility for ((pregnant women)) pregnancy and after-pregnancy-related coverage.

(1) A pregnant ((woman)) person is eligible for the Washington apple

health ((WAH) for pregnant women program)) pregnancy-related coverage if ((she)) the person:

(a) Meets citizenship or immigration status under WAC 182-503-0535;

(b) Meets Social Security number requirements under WAC 182-503-0115;

(c) Meets Washington state residency requirements under WAC 182-503-0520 and 182-503-0525; and

(d) Has countable income at or below the limit described in:

(i) WAC 182-505-0100 to be eligible for categorically needy (CN) coverage; or

(ii) WAC 182-505-0100 to be eligible for medically needy (MN) coverage. MN coverage begins when the pregnant ((woman)) person meets any required spenddown liability as described in WAC 182-519-0110.

(2) A noncitizen pregnant ((woman)) person who does not ((need to)) meet the requirements in subsection (1)(a) or (b) of this section ((to be)) is eligible for ((WAH and receives either)) apple health if they meet countable income standards for CN or MN coverage ((based upon her)) and have countable income as described in subsection (1)(d) of this section.

(3) The assignment of medical support rights as described in WAC 182-503-0540 ((do)) does not apply to pregnant ((women)) people.

(4) A ((woman)) person who was eligible for and ((received coverage)) covered under any ((WAH)) minimum essential coverage apple health program as described in WAC 182-500-0070 on the last day of pregnancy ((is)) remains continuously eligible for ((extended medical)) after-pregnancy coverage ((for postpartum care)) for ((a minimum of sixty days from the end of her pregnancy)) 12 months, beginning the month after their pregnancy ends. This includes ((women)) people who meet an MN spenddown liability with expenses incurred no later than the date the pregnancy ends. ((This extension continues through the end of the month in which the sixtieth day falls)) After-pregnancy coverage has the same scope of coverage as pregnancy-related coverage.

(5) ((All women approved for WAH pregnancy coverage at any time are eligible for family planning services for twelve months after the pregnancy ends.)) A person is eligible for after-pregnancy coverage if they:

(a) Apply for and meet all requirements of the apple health pregnancy-related coverage program; and

(b) Apply any time during their 12-month postpartum period to receive ongoing medical coverage until the end of the 12th month after their pregnancy ends.

[Statutory Authority: RCW 41.05.021, 41.05.160, Public Law 111-148, 42 C.F.R. § 431, 435, and 457, and 45 C.F.R. § 155. WSR 14-16-052, § 182-505-0115, filed 7/29/14, effective 8/29/14. WSR 12-13-056, recodified as § 182-505-0115, filed 6/15/12, effective 7/1/12. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, 42 U.S.C. 9902(2). WSR 05-07-032, § 388-462-0015, filed 3/9/05, effective 4/9/05. Statutory Authority: RCW 74.08.090, 74.08A.100, 74.09.080, and 74.09.415. WSR 02-17-030, § 388-462-0015, filed 8/12/02, effective 9/12/02. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-462-0015, filed 7/31/98, effective 9/1/98. Formerly WAC 388-508-0820, 388-508-0830, 388-522-2230 and 388-508-0835.]

AMENDATORY SECTION (Amending WSR 14-21-040, filed 10/7/14, effective 11/7/14)

WAC 182-505-0117 Washington apple health—Eligibility for pregnant minors. (1) For the purposes of this rule, "minor" means a person under the age of ((nineteen)) 19.

(2) A pregnant minor who meets Washington state residency requirements under WAC 182-503-0520 and 182-503-0525 is eligible for the Washington apple health ((WAH)) for kids program.

(3) The medical assistance unit (MAU) of a pregnant minor is the pregnant minor.

(4) There are no income standards and no resource tests for a pregnant minor to be eligible for ((WAH)) apple health for kids.

(5) To ensure reimbursement from the U.S. Department of Health and Human Services, every pregnant minor applicant for ((WAH)) apple health for kids must provide ((her)) their Social Security number, unless ((she is)) they are exempt under WAC 182-503-0515, and must provide ((her)) their citizenship or immigration status. The immigration status of a pregnant minor who is an undocumented alien (see WAC 182-503-0530) will not be disclosed to any third party.

(6) The assignment of rights as described in WAC 182-503-0540 does not apply to pregnant minors.

(7) A pregnant minor covered by the ((WAH)) apple health for kids program ((will have)) has a one-year certification period ((unless she has her nineteenth)). If a minor has their 19th birthday during ((her)) their pregnancy, ((at which time she will be)) they are automatically enrolled in ((the WAH)) apple health for ((pregnant women program). Under the WAH for pregnant women program, her coverage will continue through the end of her pregnancy and she will be)) pregnancy coverage through the end of their pregnancy. They are eligible for ((extended medical)) after-pregnancy coverage for ((postpartum care through the end of the month of the sixtieth day after the end of her pregnancy)) 12 months, beginning the month after their pregnancy ends.

[Statutory Authority: RCW 41.05.021, 41.05.160, P.L. 111-148, 42 C.F.R. §§ 431, 435, 457, and 45 C.F.R. § 155. WSR 14-21-040, § 182-505-0117, filed 10/7/14, effective 11/7/14.]

OTS-3526.3

AMENDATORY SECTION (Amending WSR 14-01-021, filed 12/9/13, effective 1/9/14)

WAC 182-509-0305 MAGI income—Persons subject to the modified adjusted gross income (MAGI) methodology. (1) Eligibility for Washington apple health ((WAH)) for the following ((persons)) people is determined using the modified adjusted gross income (MAGI) methodology described in WAC 182-509-0300(());

((1)) (a) Parents or caretaker relatives with an eligible dependent child (described in WAC 182-503-0565) whose net countable income is below ((fifty-four)) 54 percent of the federal poverty level (FPL) as described in WAC 182-505-0240.

((+2))) (b) Parents or caretaker relatives with an eligible dependent child whose net countable income exceeds the standard described in (a) of this subsection ((1 of this section)) but is at or below ((one hundred thirty three)) 133 percent FPL as described in WAC 182-505-0250 and 182-507-0110.

((+3))) (c) Adults with no eligible dependent child with net countable income at or below ((one hundred thirty three)) 133 percent FPL as described in WAC 182-505-0250 and 182-507-0110.

((+4))) (d) Pregnant ((women or women within a two month post-partum period)) people whose net countable income, based on a household size that includes any unborn children, is below ((one hundred ninety three)) 193 percent FPL at the time of application, as described in WAC 182-505-0115.

((+5))) (e) Children age ((eighteen)) 18 or younger in households with net countable income which is below ((two hundred ten)) 210 percent FPL, as described in WAC 182-505-0210 (3)(a).

((+6))) (f) Children age ((eighteen)) 18 or younger in households with net countable income ((which)) that is between ((two hundred ten)) 210 percent and ((three hundred twelve)) 312 percent FPL, as described in WAC 182-505-0215. Children who are eligible under this section are subject to premiums as described in WAC 182-505-0225.

((+7))) (2) Household size for a person who is subject to MAGI income methodologies is determined according to WAC 182-506-0010.

[Statutory Authority: RCW 41.05.021, Patient Protection and Affordable Care Act (P.L. 111-148), 42 C.F.R. §§ 431, 435, 457, and 45 C.F.R. § 155. WSR 14-01-021, § 182-509-0305, filed 12/9/13, effective 1/9/14.]

OTS-3527.1

AMENDATORY SECTION (Amending WSR 17-23-039, filed 11/8/17, effective 1/1/18)

WAC 182-514-0263 Non-SSI-related institutional medically needy coverage for pregnant ((women)) people and people age ((twenty)) 20 and younger. (1) Medically needy (MN) coverage under this section is only available for people age ((twenty)) 20 and younger or pregnant ((women)) people. The medicaid agency determines a client who meets SSI-related criteria under WAC 182-512-0050 eligible for institutional MN coverage under WAC 182-513-1395. If a client meets requirements in both this section and WAC 182-513-1395, the client may choose which program to enroll in for coverage.

(2) A client whose income exceeds the categorically needy (CN) standards under WAC 182-514-0250 and 182-514-0260 is:

(a) Eligible for MN coverage with no spenddown if the client's countable income (CI) is equal to or less than the department-contracted daily rate times the number of days in the institution;

(b) Eligible for MN coverage after a spenddown under WAC 182-519-0110 is met if the client's CI is above the department-contracted daily rate times the number of days in the institution but less than the institution's private rate;

(c) Not eligible for payment of long-term care services provided by the institution if the person's CI exceeds the institution's private rate;

(d) Responsible for paying up to the monthly state rate for the facility as participation in the cost of care; and

(e) Allowed to keep a monthly personal needs allowance (PNA) under WAC 182-513-1105. Current PNA and long-term care standards can be found at (www.heawashington.gov/medicaid/eligibility/pages/standards.aspx) the agency's program standard for income and resources webpage.

(3) If a client's CI exceeds the institution's private rate, the agency determines eligibility for medical coverage under chapter 182-519 WAC.

[Statutory Authority: RCW 41.05.021, 41.05.160, 2017 c 270. WSR 17-23-039, § 182-514-0263, filed 11/8/17, effective 1/1/18. Statutory Authority: RCW 41.05.021, 41.05.160. WSR 16-04-087, § 182-514-0263, filed 1/29/16, effective 2/29/16.]

WSR 22-07-104

PROPOSED RULES

DEPARTMENT OF COMMERCE

[Filed March 23, 2022, 8:39 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-14-050.

Title of Rule and Other Identifying Information: Chapter 194-40 WAC, Clean Energy Transformation Act (CETA).

Hearing Location(s): On April 27, 2022, at 1:00 p.m., Zoom meeting. This hearing will be virtual only. Please check CETA rule making web page for meeting information <https://www.commerce.wa.gov/growing-the-economy/energy/ceta-rulemaking/>.

Date of Intended Adoption: May 6, 2022.

Submit Written Comments to: Glenn Blackmon, P.O. Box 42525, Olympia, WA 98504, email ceta@commerce.wa.gov.

Assistance for Persons with Disabilities: Contact Steven Hershkowitz, phone 360-688-4006, email ceta@commerce.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule ensures the proper implementation and enforcement of CETA and addresses wholesale market transactions and the prohibition on double counting, as provided for under RCW 19.405.100 and 19.405.130. The proposed rules: Provide clarification of the requirement in RCW 19.405.040 that a utility use renewable or nonemitting electricity sources in an amount equal to 100 percent of the utility's retail electric load; provide clarification of the requirement in RCW 19.405.050 that a utility supply 100 percent of all sales of electricity to Washington retail electric customers using electricity from renewable or nonemitting sources, establish specification, verification, and reporting requirements for (i) wholesale market purchases and (ii) the prohibition of double counting of nonpower attributes under RCW 19.405.040; and provide clarification on the treatment of storage resources under the requirement in chapter 19.405 RCW.

Reasons Supporting Proposal: The rules are proposed to comply with the requirements of RCW 19.405.130 and to ensure proper implementation of the state's landmark 100 percent clean electricity law. CETA puts Washington on a path to eliminate coal-fired electric generation after 2025, achieve a greenhouse gas-neutral electricity supply by 2030, and achieve 100 percent renewable and nonemitting generation by 2045.

Statutory Authority for Adoption: RCW 19.405.100, 19.405.130.

Statute Being Implemented: Chapter 19.405 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of commerce, governmental.

Name of Agency Personnel Responsible for Drafting: Glenn Blackmon, 1011 Plum Street S.E., P.O. Box 42525, Olympia, WA 98504-2525, 360-688-6000; Implementation: Department of Commerce, 1011 Plum Street S.E., P.O. Box 42525, Olympia, WA 98504-2525, 360-407-6000; and Enforcement: Attorney General, 1125 Washington Street S.E., P.O. Box 40100, Olympia, WA 98504-0100, 360-725-6200.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The department of commerce is not a listed agency in RCW 34.05.328.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated.

SUMMARY OF COST CALCULATIONS:**SECTION 1:**

Describe the proposed rule, including: A brief history of the issue; an explanation of why the proposed rule is needed; a brief description of the probable compliance requirements and the kinds of professional services that a small business is likely to need in order to comply with the proposed rule.

1.1 The Clean Energy Transformation Act: CETA is a comprehensive 100 percent clean electricity law with specific standards and requirements established by the legislature. The legislature authorized or required commerce to adopt rules to ensure the proper implementation of CETA as it applies to consumer-owned utilities (RCW 19.405.100).

The legislature also directed commerce and the utilities and transportation commission to define requirements, including appropriate specification, verification, and reporting requirements, for retail electric load met with market purchases and the western energy imbalance market or other centralized markets administered by a market operator for the purposes of RCW 19.405.030 through 19.405.050; and to address the prohibition on double counting of nonpower attributes under RCW 19.405.040(1) that could occur under other programs.

1.2 Regulatory Fairness Act: The Regulatory Fairness Act (RFA), chapter 19.85 RCW, requires that an agency prepare a small business economic impact statement for a proposed rule if the proposed rule will impose more-than-minor costs on businesses in an industry.

If the proposed rule exceeds the minor cost threshold for businesses in an industry, the agency must conduct a small economic business impact statement (SBEIS), and may then determine if the rule would have a disproportionate compliance cost burden on small business[es], and if legal and feasible, reduce this disproportionate impact.

The following definitions are used in the RFA:

- "Small business" means any business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that is owned and operated independently from all other businesses, and that has 50 or fewer employees.
- "Minor Cost" means a cost per business that is less than 0.3 percent of annual revenue or income, or \$100, whichever is greater, or 1 percent annual payroll.

The proposed rules apply to electric utilities that provide service to retail customers in Washington. Commerce has determined, for the purposes of this analysis, the industry is Electric Power Distribution (NAICS 21122). For this industry, the minor cost threshold is \$356,170 per year, as calculated using the Minor Cost Threshold Calculator (updated October 2021) of the governor's office of regulatory innovation and assistance.

1.3 Likely Impact of the Proposed Rules: Commerce published a Request for Cost Information seeking information from electric utilities to assist in its estimation of costs for this purpose. Included in the request was an initial analysis, prepared by commerce, to identify if there were any specific rule provisions that impose requirements beyond the CETA statute that may result in costs to regulated businesses. If a business believes the initial analysis incorrectly concludes

that a rule does not impose any costs beyond what the statute requires, it was requested to provide cost information on that rule provision. Commerce received three responses to its request.

The Washington Public Utility District Association (WPUDA) did not provide any cost information, but made three requests. Citing RCW 19.85.030 (2)(f), WPUDA asked commerce [to] modify the language of WAC 194-40-210(4) to remove the exclusion from compliance eligibility of generating resources or power supply contracts that are not included in the portfolio analyzed by a utilities integrated resource plan. Commerce has removed this provision from WAC 194-40-210.

WPUDA similarly requested commerce eliminate WAC 194-40-415 because "the draft rules require an approach to compliance that currently does not exist."¹ As stated in the policy memo accompanying the draft rules, a clean electricity market does not exist. However, the proposed rule does not require a utility to participate in a clean energy market for compliance. It merely states that it is a compliance option. Commerce therefore made no changes to the draft rule.

1 <https://deptofcommerce.app.box.com/file/929881419846>

Finally, WPUDA requested that commerce assess the entirety of costs of the proposed rules to utilities of various sizes as specified by statute (chapter 19.85 RCW). As required under chapter 19.85 RCW, commerce assessed whether the proposed rules would exceed the minor cost threshold of \$356,170 per year for regulated businesses. Commerce could not identify any provisions that impose requirements beyond those of the statute that may result in costs to regulated businesses, and requested regulated businesses to submit cost information if a regulated business thought otherwise.

Ferry County PUD No. 1 was one of two public utility districts to submit cost information. Ferry County Public Utility District No. 1 claimed it would hire one full-time employee as a result of the proposed rules.² The employee would make \$75,000 per year. This expense falls below the minor cost threshold of \$356,170 per year for the electric power distribution industry, as calculated using the Minor Cost Threshold Calculated [Calculator] (updated October 2021) of the governor's office of regulatory innovation and assistance.

2 <https://deptofcommerce.app.box.com/file/929922208992>

Grays Harbor County PUD No. 1 found no additional costs related to commerce's proposed rules, but estimated its costs to comply with the statute to be \$419,898.40 per year.³ Costs to comply with the statute do not count toward the minor cost threshold; only additional costs resulting from the agency's proposed rules count toward the minor cost threshold.

3 <https://deptofcommerce.app.box.com/file/931026102551>

Commerce has determined that the proposed rules do not impose more-than-minor costs on businesses in the industry and that a small business economic impact statement is not required.

March 23, 2022
Dave Pringle
Policy Advisor and Rules Coordinator

OTS-3672.2

NEW SECTION

WAC 194-40-370 Accounting for electricity from storage resources. (1) The eligibility of renewable or nonemitting electricity to demonstrate compliance with CETA is not affected by the use of storage resources.

(2) Except for storage resources located on the customer side of a retail meter, any electrical consumption or loss resulting from the charging, holding, and discharging of storage resources is not considered retail electric load as defined in RCW 19.405.020(36).

(3) Any consumption or loss resulting from the charging, holding, and discharging of storage resources located on the customer side of a retail meter is considered retail electric load for the purpose of compliance with CETA.

[]

NEW SECTION

WAC 194-40-410 Use of renewable energy credits other than unbundled RECs to comply with the greenhouse gas neutral standard. (1) A utility may use a REC other than an unbundled REC to comply with the requirements of RCW 19.405.040 (1)(a) or to demonstrate performance compared to an interim target established under RCW 19.405.060(1) only if the utility complies with the requirements of this section.

(2) The utility must acquire the REC and the electricity associated with the REC in a single transaction through ownership or control of the generating facility or through a contract for purchase or exchange.

(3) The electricity associated with the REC must be:

(a) From a generating facility located within the utility's service area or balancing authority area; or

(b) Acquired by the utility at one of the following points of delivery:

(i) The transmission or distribution system of an electric utility (as defined in RCW 19.405.020);

(ii) The transmission system of the Bonneville Power Administration;

(iii) The transmission system of any entity that is a participant in an organized electricity market located in the Western Interconnection in which the electric utility is a participant; or

(iv) Another point of delivery designated by the utility for the purpose of subsequent delivery to the utility.

(4) The electricity associated with the REC must be from a generating facility or contract that is part of a resource portfolio reasonably expected to be capable of serving at least 80 percent of the utility's retail electric load over each compliance period. Each utility required under RCW 19.280.030(1) to prepare an integrated resource plan must demonstrate compliance with this requirement by, at a minimum, showing through an hourly analysis that the expected renewable or nonemitting output of the resource portfolio could be generated and delivered to serve at least 80 percent of expected retail electric load. This demonstration must use inputs and assumptions consistent with the utility's integrated resource plan and may be updated with changes in its resource portfolio.

(5) A REC is not eligible under this section if the utility sells or otherwise transfers ownership of the electricity associated with the REC in a transaction that (a) contractually specifies the source of the electricity by fuel source or as renewable or (b) transfers the nonpower attributes of the electricity.

[]

NEW SECTION

WAC 194-40-415 Use of renewable energy credits to comply with the 100 percent renewable or nonemitting standard. (1) Except as provided in subsection (2) of this section, a utility may not use a REC to comply with the requirements of RCW 19.405.050(1) unless:

(a) The utility acquired the REC and the electricity associated with the REC in a single transaction through ownership or control of the generating facility or through a contract for purchase or exchange; and

(b) The utility did not use the associated electricity for any purpose other than supplying electricity to its Washington retail electric customers.

(2) A utility may use any REC to comply with the requirements of RCW 19.405.050(1) if:

(a) The utility acquired the REC through participation in a clean electricity market;

(b) The REC is associated with electricity acquired through participation in a clean electricity market; and

(c) The utility obtained all electricity supplied to its retail customers from clean electricity markets.

(3) For purposes of this section, "clean electricity market" means an organized wholesale electricity market that provides for the physical delivery of electricity and excludes electricity from fossil fuel and unspecified sources.

[]

NEW SECTION

WAC 194-40-420 Safeguards to prevent double counting of unbundled RECs. (1) A utility may use an unbundled REC as an alternative compliance option, as provided in RCW 19.405.040 (1)(b), only if the utility demonstrates that there is no double counting of any nonpower attribute associated with that REC by complying with the requirements of this section.

(2) Except as provided in subsection (4) of this section, a utility may use an unbundled REC for alternative compliance only if the utility demonstrates:

(a) The associated electricity was sold, delivered, or transferred without specifying fuel sources or nonpower attributes and under a contract expressly stating the fuel source or nonpower attributes are not included; and

(b) The associated electricity was not delivered, reported, or claimed as a zero-emission specified source or assigned the emissions rate of the renewable generating facility under a GHG program.

(3) A utility's demonstration under this section may be met by documentation that the entity providing the unbundled REC:

(a) Provides contract, confirmation, or other transaction terms that comply with the requirements of subsection (2) of this section;

(b) Was a party to or otherwise has knowledge of the transaction in which the associated electricity was sold or transferred and attests to complying with the requirements of subsection (2) of this section; or

(c) Obtained the unbundled REC from an entity that attests that it and all previous owners of the REC transferred the REC using transaction terms complying with the requirements of (a) or (b) of this subsection.

(4) To claim and retire an unbundled REC for alternative compliance where the Washington-eligible RECs were created by renewable electricity marketed by BPA, a utility must demonstrate the REC was not associated with electricity from a system sale from BPA directly into a state with a GHG program and to an entity regulated by the state GHG program. The RECs are calculated based on the same vintage year as the year in which the electricity was imported to the state with the GHG program.

(5) For the purposes of this section, "GHG program" includes any governmental program outside of Washington that caps or limits greenhouse gas emissions or requires the purchase, surrender, or retirement of greenhouse gas allowances, if the scope of the greenhouse gas program includes electricity imported from outside the governmental jurisdiction and does not require the retirement of RECs for such imported electricity.

(6) This section sets only the minimum requirements necessary to demonstrate that no double counting has occurred. The auditor may request that the utility produce other evidence or recommend specific actions for the utility to consider to demonstrate that there is no double counting of nonpower attributes.

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WSR 22-07-108
PROPOSED RULES
BELLEVUE COLLEGE

[Filed March 23, 2022, 9:56 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-21-094.

Title of Rule and Other Identifying Information: Revision of chapter 132H-116 WAC, Parking and traffic rules. New WAC 132H-116-015, 132H-116-025, 132H-116-035, 132H-116-045, 132H-116-055, 132H-116-065, 132H-116-075, 132H-116-085 and 132H-116-095; and repealing WAC 132H-116-300, 132H-116-310, 132H-116-315, 132H-116-320, 132H-116-330, 132H-116-350, 132H-116-351, 132H-116-352, 132H-116-353, 132H-116-354, 132H-116-355, 132H-116-356, 132H-116-357, 132H-116-358, 132H-116-360, 132H-116-405, 132H-116-410, 132H-116-415, 132H-116-430, 132H-116-431, 132H-116-432, 132H-116-433, 132H-116-460, 132H-116-470, 132H-116-590, 132H-116-615, 132H-116-620, 132H-116-630, 132H-116-655, 132H-116-750, 132H-116-765, 132H-116-790, and 132H-116-791.

Hearing Location(s): On Wednesday, May 4, 2022, at 3:00 - 4:00 p.m., online via Zoom <https://bellevuecollege.zoom.us/j/81848828450>, Meeting ID 818 4882 8450, Dial-in +1 253 215 8782. Public hearing to be held remotely.

Date of Intended Adoption: June 15, 2022.

Submit Written Comments to: Nadescha Bunje, 3000 Landerholm Circle S.E., Bellevue, WA 98007, email nadescha.bunje@bellevuecollege.edu, phone 425-564-5669, by May 4, 2022.

Assistance for Persons with Disabilities: Contact Nadescha Bunje, phone 425-564-5669, TTY 425-564-6189, email nadescha.bunje@bellevuecollege.edu, by April 20, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To update the current parking and traffic rules with the intention to remove and/or update outdated information while also providing greater clarity to better serve our campus community.

Reasons Supporting Proposal: Chapter 132H-116 WAC has not been updated since 2011. Bellevue College intends to update the parking and traffic rules in order to more clearly and accurately communicate current processes.

Statutory Authority for Adoption: RCW 28B.50.140(13); chapter 34.05 RCW.

Statute Being Implemented: RCW 28B.50.140(13).

Rule is not necessitated by federal law, federal or state court decision.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

Name of Proponent: Bellevue College, governmental.

Name of Agency Personnel Responsible for Drafting: Nadescha Bunje, Bellevue College, B125, 3000 Landerholm Circle S.E., Bellevue, WA 98007, 425-564-5669; Implementation and Enforcement: Ross Villegas, Bellevue College, B132, 3000 Landerholm Circle S.E., Bellevue, WA 98007, 425-564-5710.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. Bellevue College is not one of the enumerated agencies required to conduct cost-benefit analyses under RCW 34.05.328(5).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

March 23, 2022

Alicia M. Keating Polson
Rules Coordinator and Executive Director
of the President's Office

OTS-3686.5

NEW SECTION

WAC 132H-116-015 Purpose. (1) Under RCW 28B.50.140(10) the board of trustees of Community College District VIII has the authority to establish rules and regulations for pedestrian and vehicular traffic over property owned, operated, or maintained by the college district.

(2) The objectives of these regulations are:

- (a) To protect and control pedestrian and vehicular traffic on property owned, operated, or maintained by the college district.
- (b) To ensure access at all times for emergency equipment.
- (c) To minimize traffic disturbances.
- (d) To facilitate the operation of the college by providing adequate access to vehicles.
- (e) To allocate limited parking space for the most efficient use.
- (f) To protect state property.

(3) If any provision of this chapter is adjudged by a court to be contrary to law, the remaining provisions shall continue to be in effect.

[]

NEW SECTION

WAC 132H-116-025 Definitions. For the purpose of this chapter, the following terms and definitions shall apply:

(1) **Board:** The board of trustees of Community College District VIII, state of Washington.

(2) **Campus:** Any and all real property, operated, controlled, or maintained by Bellevue College.

(3) **Public safety office:** Unit of the college accountable to the vice president of administrative services and responsible for campus security, public safety, emergency operations, parking and traffic control.

(4) Public safety officers: Employees of the college accountable to the vice president of administrative services and responsible for campus security, public safety, emergency operations, and parking and traffic control.

(5) Student: All persons taking courses at or through the college, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses, online courses, or otherwise. Persons who withdraw, graduate, or complete courses after the date of a reported violation, who are not officially enrolled for a particular term but who have a continuing relationship with the college, or who have been notified of their acceptance for admission are considered "students."

(6) Faculty members: Any person employed by the college as an instructor, counselor, librarian, program or department chair, or in any other position for which the training, experience, or responsibilities are comparable as determined by the appointing authority.

(7) Staff: The administrative employees, classified members, and part-time staff employed by the college.

(8) Visitor(s): Person(s) who come on to campus as guest(s), or who lawfully visit the campus and are neither employees nor students of the institution.

(9) Pedestrian: A person who is not driving or otherwise occupying a vehicle.

(10) Permit: A properly displayed document, card, or sticker, issued by the public safety office, that authorizes a vehicle to park in designated areas on the campus. Parking permits may also be virtual in nature and identified by other means, such as a license plate.

(11) Carpool: Groups of two or more people, including faculty, staff, or students, who commute to the college in the same vehicle and who have obtained a carpool permit.

(12) Vehicle: Any motorized or electric automobile, truck, motorcycle or moped that requires a DMV license plate to be displayed.

(13) Foot propelled device: Wheeled devices including, but not limited to, bicycles, skateboards, roller skates, or roller blades that are designed or used for recreation and/or transportation purposes. Foot propelled devices may be supplemented by battery power.

(14) Idling: The running of an engine that supplies the motive power for a vehicle, when not for the purpose of moving the vehicle with the normal flow of traffic on a street or roadway.

[]

NEW SECTION

WAC 132H-116-035 Parking permits and parking locations. (1) The vice president of administrative services or designee is authorized to issue all parking permits.

(2) Parking permit fees shall be established, as appropriate, by the college's board of trustees. Once fees have been established and approved the college president may adjust the fees. For represented employees, fees will be in accordance with applicable collective bargaining agreements (CBAs).

(3) No person shall park, or leave any vehicle, whether attended or unattended, on the campus of Bellevue College without a valid Bel-

levue College permit, a valid disability placard or license plate, or a government agency license plate.

(4) Permits issued by the public safety office shall be displayed in accordance with the instructions issued with the permit. Permits not displayed in accordance with the instructions issued with the permit are invalid. Vehicles that fail to display a permit in accordance with the instructions shall be subject to citation.

(5) Parking permit types: Bellevue College parking permits include current, temporary, or special permits and are valid for the date(s), times, and locations specified on the permits. Parking permits are required and lots are monitored 24 hours a day and seven days a week. All permits must be displayed according to the instructions on the permit or as described below. Bellevue College parking permits are issued by the public safety office or through authorized distribution points (e.g., a temporary parking permit kiosk). Permits include, but are not limited to, the following:

(a) Carpool permits: Faculty, staff, or students can apply for this permit through public safety. One permit will be issued for each carpool and may only be used among the registered members of the group. Carpool vehicles must also display or obtain a regular student or employee permit.

(b) Daily and hourly permits: Daily and hourly parking permits are available through the public safety office or through designated locations across campus.

(c) Employee permits: Parking permits for faculty and staff of Bellevue College. Registered volunteers are eligible for an employee permit.

(d) Discount student permits: Discounted student parking permits for students of Bellevue College that may be used in general parking lots.

(e) Guest permits: Temporary permits may be issued to guests of the college (including, but not limited to, guest speakers, job candidates, or visiting officials).

(f) Motorcycle permits: Issued by the public safety office for motorcycles.

(g) Special events: Temporary reserved parking for conferences, seminars, and other special events, can be reserved through the events office or public safety. Requests should be submitted by at least 10 business days in advance.

(h) Student permits: Parking permits for students of Bellevue College.

(6) Transfer of permits:

(a) With the exception of carpool permits, parking permits are not transferable. If a vehicle is sold or traded, the permit holder may retain their permit and use it on a different vehicle so long as they update their vehicle information with the public safety office.

(b) Permits may be reissued as authorized by the director of public safety.

(7) Parking permit refunds: In cases where a permit is no longer needed, employee or student permit holders may request a partial refund from public safety using the refund form on the public safety web page. Refund amounts will be based on the following:

(a) Parking permit fees will be refunded at 100 percent less five dollars when the refund form is received by the fifth instructional day of the quarter.

(b) Parking permit fees will be refunded at 50 percent when the refund form is received by the sixth instructional day through the 20th instructional day of the quarter.

(c) Parking permit fees will not be refunded when the refund form is received after the 20th instructional day of the quarter.

(d) The parking permit document, card, or sticker must be returned with the refund form when requesting a refund for it to be considered submitted. In the case of a virtual permit, the permit holder must notify public safety in writing using the refund form; however, no physical permit must accompany the form.

(8) A map of the designated parking lots/spaces on campus can be found on the college website and are also noted across campus with parking lot signs. When parking on campus, license plates must be clearly visible.

(9) Students, staff, faculty, and visitors may park on campus as follows:

(a) Student parking permits are valid only in areas designated for student parking, daily metered parking, and general parking.

(b) Staff/faculty parking permits are valid in the areas designated for employee parking, daily metered parking, and general parking.

(c) Visitors are subject to the parking regulations of Bellevue College and are required to have a valid temporary permit. Temporary parking permits are valid only in the area(s) designated in the temporary parking permit.

(10) Parking locations include, but are not limited to, the following:

(a) Disability parking spaces: Only vehicles displaying a valid state of Washington placard or license plate may park in designated disability spaces. Vehicles with disability placards or plates may park in any employee, student, metered, or general parking area on campus.

(b) Electric charging stations: A valid parking permit is required to park in electric vehicle charging spaces. Vehicles must be actively charging while parked in electric charging spaces.

(c) Electric and hybrid parking spaces: Parking for electric and hybrid vehicles only.

(d) Employee parking: Requires an employee permit. Bellevue College also provides 24-hour employee parking where employees may leave their vehicle overnight after notifying public safety.

(e) General parking: Available for use by all permit holders.

(f) Guest or special event parking: Guests may park in designated areas with either a guest or special event permit issued by the public safety office.

(g) Motorcycle parking: Motorcycles may park in employee or student lots in accordance with the permit type or areas designated for motorcycle parking.

(h) Reserved parking: Includes loading docks or other specially reserved areas (including, but not limited to, emergency response, college, or official visitor vehicles).

(i) Student parking: Requires a student permit (daily permits are allowed). Also includes limited weekday permits (including, but not limited to, Monday/Wednesday and Tuesday/Thursday student permits).

(j) Visitors: Visitors may park in designated lots with the purchase of an hourly or daily permit.

(11) Parking within designated spaces:

(a) No vehicle shall be parked on the campus except in those areas set aside and designated as parking areas.

(b) No vehicle shall be parked so as to occupy any portion of more than one parking space as designated within the parking area. The fact that other vehicles may have been so parked as to require the vehicle parked to occupy a portion of more than one space shall not constitute an excuse for a violation of this section.

(c) No vehicle shall be parked at any time in campus roadways, fire lanes, bus zones, loading zones, service driveways, walkways, courtyards, or in the landscaping except emergency vehicles, college owned vehicles, and designated service vehicles.

(d) No recreational vehicle (RV), motorhome, or vehicle used as a temporary or permanent dwelling shall be parked on campus overnight.

[]

NEW SECTION

WAC 132H-116-045 Traffic and parking regulations. (1) The authority and powers conferred upon the vice president of administrative services or the director of public safety by these regulations may be delegated to other college employees.

(2) Parking shall be allocated by the vice president of administrative services consistent with the objectives of these regulations.

(3) The applicable parking and traffic rules and regulations for Bellevue College include:

(a) The motor vehicle and other traffic laws of the state of Washington, Title 46 RCW.

(b) The traffic code of the city of Bellevue.

(c) The Bellevue College parking and traffic regulations.

(d) In case of conflict among the provisions of the motor vehicle and other traffic laws of the state of Washington or the traffic code of the city of Bellevue and Bellevue College parking and traffic regulations, the provisions of the state of Washington motor vehicle laws shall govern.

(4) Regulatory signs, markings, barricades:

(a) The vice president of administrative services is authorized to erect signs, barricades, and other structures and to paint marks and other directions upon the streets and parking areas owned, operated, and maintained by the college.

(b) Drivers of vehicles shall obey the signs, barricades, structures, markings, and directions erected pursuant to this section. Drivers shall also comply with directions given to them by a campus public safety officer or other authorized college personnel controlling and regulating traffic or parking.

(c) No person without authorization from the vice president of administrative services shall move, deface, or in any other way change a sign, barricade, structure, marking or direction so placed, or previously placed, for the purpose of regulating traffic or parking.

(5) The regulations governing permits and parking within designated spaces shall not apply to the drivers of state-owned vehicles operated by Bellevue College in the performance of assigned functions.

(6) During special occasions that may cause additional and/or heavy traffic and during emergencies, the director of public safety is authorized to impose additional traffic and parking regulations to achieve the specified objectives of this chapter.

(7) The registered owner of the vehicle is responsible for their vehicle parked on campus. They shall be held responsible for all violations of these rules and regulations charged to that vehicle. However, the operator of a vehicle will not be relieved of responsibility for violating any rule or regulation of this chapter simply because they are not also the registered owner of the vehicle.

(8) Vehicles shall not exceed five miles per hour in parking lots, or 20 miles per hour on campus roads, or such lower speeds as may be reasonable and prudent based on the circumstances or as otherwise posted.

(9) No person driving or otherwise responsible for a motor vehicle shall permit it to stand unattended without first:

(a) Effectively setting the brake and transmission to prevent movement of the vehicle.

(b) Stopping the engine, turning off the vehicle or otherwise rendering the vehicle immobile.

(10) Vehicles standing or stopped, whether idling or parked, are subject to the rules under RCW 46.61.570 and Bellevue College policies and procedures and may be subject to citation or impoundment in accordance with such rules. Engine idling is prohibited in no parking zones on campus. Outside of no parking zones, employees, students, and visitors are encouraged to avoid unnecessary idling in order to create a safer and cleaner campus.

(11) Pedestrian's right of way:

(a) The operator of a vehicle shall yield right of way, slowing down or stopping, if need be, to so yield to any pedestrian, but no pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close that it is impossible or unsafe for the driver to yield.

(b) Whenever any vehicle slows or stops so as to yield to pedestrian traffic, the operator of any other vehicle approaching from the rear shall not overtake and pass such a vehicle which has slowed or stopped to yield to pedestrian traffic.

(c) Where a sidewalk is provided, pedestrians shall proceed upon such sidewalk.

(12) Motorcycles and mopeds:

(a) Motorcycles and mopeds are subject to all traffic and parking rules and regulations controlling other vehicles.

(b) Motorcycles and mopeds must be parked in designated areas.

(c) Motorcycles and mopeds are not permitted on paths, sidewalks, or authorized bicycle or pedestrian areas or in buildings at any time.

(13) Foot propelled devices:

(a) Bicycles shall be secured in designated areas only. Unattended or improperly secured bicycles may be removed by public safety officers. Public safety patrol bicycles are exempt.

(b) No foot propelled devices shall be operated on or in campus walkways, corridors, courtyards, hallways or buildings unless their use is required as part of the educational process in an authorized program, with the exception of public safety patrol bicycles.

(14) The operator of any vehicle or foot propelled device involved in an accident on campus shall within 24 hours report such accident to the public safety office. This does not relieve any person so involved in an accident from their responsibility to file a state of Washington motor vehicle accident report.

(15) Any vehicle theft or theft from a vehicle that occurs on campus should be reported to the public safety office promptly.

(16) Except for college owned and/or operated vehicles, the college assumes no liability under any circumstances for vehicles on college properties.

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NEW SECTION

WAC 132H-116-055 Disability parking. Vehicles displaying a valid state of Washington disability parking placard or license plate may park in parking spaces or areas reserved for persons with physical disabilities pursuant to RCW 46.19.030.

[]

NEW SECTION

WAC 132H-116-065 Enforcement. (1) The vice president of administrative services is responsible for parking and traffic management on campus. The director of public safety has the authority to enforce all college parking and traffic rules and regulations and to delegate that authority.

(2) Parking rules and regulations will be enforceable throughout the calendar year on a 24-hour daily basis.

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NEW SECTION

WAC 132H-116-075 Citations. (1) Citations will be issued based on reasonable cause to believe that a violation of these rules and regulations has occurred. Citations are issued by affixing a copy of the citation on the vehicle.

(2) Grounds for the issuance of citations include, but are not limited to:

- (a) No valid parking permit displayed or on record;
- (b) Blocking or impeding traffic;
- (c) Displaying an unauthorized/stolen/forged permit;
- (d) Improperly displayed parking permit;
- (e) Improper use of carpool permit;
- (f) Parking a nonelectric/hybrid vehicle in an electric/hybrid space;
- (g) Vehicles parked:
 - (i) In a disability space without a valid placard or license plate;
 - (ii) Over designated time limit;
 - (iii) In an area not designated for parking;
 - (iv) In an area not authorized;
 - (v) On or blocking a walkway;
 - (vi) In a marked no parking area;
 - (vii) In landscaping;

- (viii) In a reserved area without a special permit;
- (ix) In fire lane or impeding access to a fire hydrant;
- (x) In two or more spaces;
- (xi) In excess of 24 hours without prior approval.

(3) The college charges the following monetary fines for the following violations:

- (a) Twenty-five dollar fine:
 - (i) No valid parking permit displayed or on record;
 - (ii) Improperly displayed parking permit;
 - (iii) Parked over designated time limit;
 - (iv) Parked in two or more spaces;
 - (v) Parked in excess of 24 hours without prior approval;
 - (vi) Parking a nonelectric/hybrid vehicle in an electric/hybrid

space;

(vii) Parking in an electric/hybrid vehicle charging space while not actively charging.

- (b) Fifty dollar fine:

- (i) Blocking or impeding traffic;
- (ii) Parked on or blocking a walkway;
- (iii) Parked in an area not designated for parking;
- (iv) Parked in an area not authorized;
- (v) Parked in a marked no parking area;
- (vi) Parked in landscaping;
- (vii) Parked in a reserved area without a special permit;
- (viii) Parked in a fire lane or impeding access to a fire hy-

drant;

- (ix) Improper use of a carpool permit;

- (x) Parked in a reserved area without a special permit.

(c) Sixty dollar fine: Displaying an unauthorized/stolen/forged permit.

(d) Two hundred fifty dollar fine: Parked in a disability space without a valid placard or license plate.

(4) The registered owner of the vehicle is responsible for all fees and fines associated with violations of the college's parking rules and policies.

(5) Citations that are not appealed within 21 calendar days or paid within 21 calendar days may be subject to the following actions:

(a) Vehicle impoundment in accordance with WAC 132H-116-085;

(b) Denial of future parking privileges, whether student, employ-

ee, or visitors;

(c) Unpaid citations may be sent to a collections agency.

(6) An accumulation of citations that are not responded to and resolved, by payment or appeal, by a student or college employee may be cause for disciplinary action. Students in violation may be referred to the student conduct officer for disciplinary action. Employees in violation may be referred to human resources for disciplinary action. For represented employees, disciplinary action will be in accordance with applicable CBAs.

(7) Parking permits are the property of the college, and may be denied or revoked by the public safety director for any of the following reasons:

(a) When the purpose for which the permit was issued changes or no longer exists;

(b) When a permit is used by an unregistered vehicle or by an unauthorized person;

(c) Continued violations of parking regulations;

(d) Counterfeiting or altering a permit;

(e) Falsification on a parking permit application;
(f) Failure to comply with a final decision of the citation review committee or appeal authority.

(8) Vehicles displaying revoked permits will be subject to citation.

[]

NEW SECTION

WAC 132H-116-085 Impoundment. (1) In addition to imposing fines, the vice president of administrative services and the director of public safety are authorized to impound a vehicle parked on college property on the following grounds:

(a) Creating a safety hazard.

(b) Leaving a vehicle running and unattended.

(c) Vehicles parked in excess of 72 consecutive hours without prior approval from the public safety office are considered abandoned or unattended and are subject to impoundment at the registered owner's risk and expense. No vehicle, other than college owned or leased vehicles, shall be parked on college property in excess of 24 hours without prior documented approval from the public safety office. Vehicles parked on campus in excess of 24 hours, without prior documented approval from the public safety office, are subject to citation. Once a vehicle has accumulated three consecutive citations, public safety will place one impound warning on a vehicle. After 24 hours have passed since an impound warning was placed on a vehicle it may be towed.

(d) Parking:

(i) In a marked "tow away" or "no parking" zone.

(ii) Without a valid disability permit or license plate in a space reserved for persons with physical disabilities.

(iii) Anywhere other than a designated parking area.

(e) Vehicles impeding access to:

(i) A roadway so as to impede the flow of vehicular and pedestrian traffic;

(ii) A walkway so as to impede the flow of pedestrian traffic;

(iii) A fire lane or impeding access to a fire hydrant including parking within 15 feet of a fire hydrant; or

(iv) The use of another legally parked vehicle.

(f) Accumulation of unpaid citations: An individual who accumulates four or more unpaid citations, after the deadline issued on the citations or after any appeal, is subject to having their vehicle impounded.

(2) Vehicles shall be impounded subject to the following terms and conditions:

(a) The expenses of impoundment and storage shall be charged to the registered owner of the vehicle and must be paid prior to the vehicle's release.

(b) The college shall not be liable for loss or damage of any kind resulting from the impound or storage of an impounded vehicle.

(c) Impoundment of a vehicle does not remove the obligation to pay any fines associated with the violation.

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NEW SECTION**WAC 132H-116-095 Appeals.** (1) Appeals of fines and penalties:

(a) Anyone who receives a citation for an alleged violation of these parking and traffic rules has the right to appeal.

(b) Appeals must be submitted within 21 calendar days from the date the citation is issued. Appeals are to be submitted in writing through the online form on the public safety website. A person who fails to file a written appeal in conformance with these rules shall be deemed to have waived the right to appeal.

(c) If an individual is in possession of an ADA placard that was not visibly present on the vehicle while parking in an ADA space their citation will be automatically waived, if they can provide documentation to public safety that the placard is registered to them.

(d) Grounds for parking citation appeals include, but are not limited to, the following:

- (i) Incomplete or incorrect citation;
- (ii) Received citation within 20 minutes of paying for parking;
- (iii) Financial hardship.

(2) Citation review committee:

(a) Appeals shall be considered by the Bellevue College citation review committee in a brief adjudicative proceeding pursuant to procedures set forth in chapter 132H-108 WAC. The citation review committee may uphold, reduce, or waive the fine(s) associated with the parking and traffic citation.

(b) Any fine(s) still levied against the appellant must be paid within the specified deadline in the committee's initial order, unless the appellant seeks review of the committee's initial order.

(c) Nonpayment after the deadline has passed may result in any of the college actions referred to under WAC 132H-116-075 and 132H-116-085.

(d) The committee is made up of one student, one faculty representative and one classified staff representative. An exempt employee may substitute for a classified staff or faculty member for no longer than 120 days while an appropriate classified staff or faculty member can be identified. The committee members are appointed by the vice president of administrative services upon consultation with representative groups. The assistant director of public safety will serve as the nonvoting presiding officer of the committee. A public safety representative will serve as a nonvoting advisor and provide administrative support to the committee.

(e) The citation review committee will hold regularly scheduled meetings throughout the academic year.

(f) The committee shall consider each appeal on its merits based upon the parking and traffic regulations.

(g) Appellants may request to present their case to the appeals committee. In such case, an appellant will be notified of the hearing date and location via the email address they provided in their appeal. Hearings may be held virtually. If an appellant does not request to present their appeal or does not appear at the hearing, the committee will make a decision in the appellant's absence and consider the written appeal during its deliberations.

(h) The committee will issue an initial order containing a brief statement with the reasons for its decision within 10 calendar days after the hearing. Decisions will be communicated by email and first-class mail. Any fine(s) levied against the appellant in the initial order must be paid within 21 calendar days after the committee has is-

sued a decision and mailed its initial order, unless the appellant seeks review of the initial order.

(i) Default decision: If the committee, without a showing of good cause, fails to conduct a hearing on an appeal within 60 days of receiving the notice of appeal, the fine shall automatically be considered waived.

(3) Review of initial order: An appellant who is not satisfied with the initial order has the right to seek review by the director of public safety. The appellant must submit their appeal using the online appeal form. An appeal from the initial order must be submitted within 21 calendar days of receiving the initial order. The director of public safety will issue a final order containing a written explanation of their decision within 10 calendar days after receiving the request for review. The director of public safety's decision constitutes final agency action and may be judicially appealed pursuant to the procedures set forth in chapter 34.05 RCW.

(4) Any appellant who has paid the fine(s) affirmed or set by the citation review committee has forfeited the right to an appeal.

(5) Right to appeal revocation: As established by WAC 132H-108-450(4), parking permit denials or revocations may be appealed to the vice president of administrative services. Appeals are to be submitted in writing through the online form on the public safety website.

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REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 132H-116-300	Preamble.
WAC 132H-116-310	Objectives of parking and traffic rules and regulations.
WAC 132H-116-315	Definitions.
WAC 132H-116-320	Applicable parking and traffic rules and regulations.
WAC 132H-116-330	Enforcement of parking and traffic rules and regulations.
WAC 132H-116-350	Permits required for vehicles on campus.
WAC 132H-116-351	Authorization for issuance of permits.
WAC 132H-116-352	Permit revocations.
WAC 132H-116-353	Right to appeal revocation.
WAC 132H-116-354	Transfer of permits.
WAC 132H-116-355	Responsibility for vehicles.
WAC 132H-116-356	Display of permits.
WAC 132H-116-357	Parking fees.
WAC 132H-116-358	Disability parking.
WAC 132H-116-360	Visitors.

WAC 132H-116-405	Allocation of parking spaces.
WAC 132H-116-410	Parking within designated spaces.
WAC 132H-116-415	Parking by permit type.
WAC 132H-116-430	Special parking and traffic regulations authorized.
WAC 132H-116-431	Regulatory signs, markings, barricades, etc.
WAC 132H-116-432	Speed.
WAC 132H-116-433	Pedestrian's right of way.
WAC 132H-116-460	Parking—Operator's responsibility.
WAC 132H-116-470	Exceptions to parking and traffic restrictions.
WAC 132H-116-590	Motorcycles, bicycles, scooters.
WAC 132H-116-615	Issuance of traffic citations.
WAC 132H-116-620	Fines, penalties and impounding.
WAC 132H-116-630	Appeals of fines and penalties.
WAC 132H-116-655	Report of accident and theft.
WAC 132H-116-750	Delegation of authority.
WAC 132H-116-765	Liability of college.
WAC 132H-116-790	Prohibition of literature.
WAC 132H-116-791	Enforcement.

WSR 22-07-109
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-12—Filed March 23, 2022, 10:25 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-18-119.

Title of Rule and Other Identifying Information: **Crewmember licenses**: The proposed new WAC 220-351-100 increases the numbers of unspecified commercial crewmember licenses allowed to be held by holders of certain commercial fishing licenses.

Hearing Location(s): On June 23-25, 2022, at 8:00 a.m., webinar. The public may participate in the meeting. Registration is required to testify at the public hearing. Registration deadlines and registration forms are available at <http://wdfw.wa.gov/about/commission/meetings> or contact the commission office at 360-902-2267.

Date of Intended Adoption: July 15, 2022.

Submit Written Comments to: Washington Department of Fish and Wildlife (WDFW) Fish Program, email

CrewmemberLicenses102@PublicInput.com, voicemail comments 855-925-2801, project code 2263, website comment portal <https://publicinput.com/CrewmemberLicenses102>, by June 28, 2022.

Assistance for Persons with Disabilities: Contact Title VI/ADA compliance coordinator, phone 360-902-2349, TTY 711, email title6@dfw.wa.gov, website <https://wdfw.wa.gov/accessibility/requests-accommodation>, by June 28, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WDFW proposes to add a new section to chapter 220-351 WAC, Commercial fisheries—Permits/licensing. This rule making proposes to allow four unspecified commercial crewmember licenses instead of the current allowance (of two) which can be held by a commercial fishing license holder for specific fishing licenses. This proposed amendment would not apply to nonsalmon landing licensees fishing for albacore tuna.

Reasons Supporting Proposal: Large fishing vessels often have four or more crewmembers on board in order to safely operate and need to replace crewmembers during the fishing season. The proposed rule would provide flexibility to a commercial license holder to rotate crewmembers on larger vessels during the season.

Statutory Authority for Adoption: RCW 77.65.610 (3)(a), 77.12.047, 77.04.012, and 77.04.055.

Statute Being Implemented: RCW 77.65.610 (3)(a).

Rule is not necessitated by federal law, federal or state court decision.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

Name of Proponent: WDFW, governmental.

Name of Agency Personnel Responsible for Drafting: Kirt Hughes, Kirt.hughes@dfw.wa.gov, 360-480-2421; Implementation: Kelly Cunningham, Kelly.cunningham@dfw.wa.gov [Kelly.cunningham@dfw.wa.gov], 360-902-2325; and Enforcement: Chief Steve Bear, Steve.bear@dfw.wa.gov, 360-902-2373.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. This proposal does not require a cost-benefit analysis under RCW 34.05.328 (5) [(a)] (i).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

Explanation of exemptions: The proposal involves a change to the license process requirements to obtain commercial crewmember licenses.

March 23, 2022
Annie Szvetecz
Rules Coordinator

OTS-3699.1

NEW SECTION

WAC 220-351-100 Crewmember license. Consistent with RCW 77.65.610 (3)(a), commercial fishing license holders, except for non-salmon landing licensees fishing for albacore tuna, may obtain a total of four crewmember licenses for use by individuals working on the vessel named in the commercial fishing license if the individuals are not prohibited from obtaining a crewmember license under RCW 77.65.610.

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WSR 22-07-112
PROPOSED RULES
STATE BOARD OF EDUCATION
[Filed March 23, 2022, 11:36 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-05-010.

Title of Rule and Other Identifying Information: The state board of education (SBE) has proposed amendments to WAC 180-111-050 Emergency waiver of certain graduation requirements in response to novel coronavirus.

Hearing Location(s): On April 26, 2022, at 2:00 p.m., online using Zoom at <https://us02web.zoom.us/j/87485239680>; or phone by dialing US +1-253-215-8782 with webinar Meeting ID 874 8523 9680. There will not be an in-person attendance option for the public hearing due to the COVID-19 pandemic. Members of the public are encouraged to participate online due to COVID-19 health precautions by connecting to Zoom.

Date of Intended Adoption: May 12, 2022.

Submit Written Comments to: Jacki Verd, 600 Washington Street S.E., Olympia, WA 98504, email rulescoordinatorSBE@k12.wa.us, fax 360-586-2357, by April 26, 2022.

Assistance for Persons with Disabilities: Contact Jackie Verd, phone 360-725-6025, fax 360-586-2357, TTY 360-664-3631, email rulescoordinatorSBE@k12.wa.us, by April 25, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In response to the COVID-19 pandemic, the legislature authorized SBE to adopt rules (chapter 180-111 WAC) for an emergency waiver program. The program permits districts to waive certain graduation requirements so that students whose education has been disrupted by the pandemic may earn a diploma. The waiver may be granted after the district has made a good faith effort to support students in meeting all graduation requirements, and after the student has demonstrated preparation for their next step after high school.

In existing rules, the waiver program is available to students in the classes of 2020 through 2022, and permits a waiver of two credits and graduation pathway options. The credits may be core or flexible credits, but no more than one core credit may be waived in a subject area, and the student must earn a minimum of 20 total credits to graduate. The proposed rules extend the same waiver of credits and graduation pathway options to students in the class of 2023. For students in the class of 2024, the number of credits that may be waived under this waiver program is reduced to one credit, the graduation pathway option may not be waived, and students in this class must earn a total of 21 credits to graduate.

Reasons Supporting Proposal: Disruptions due to the COVID-19 pandemic have continued to disrupt the education of Washington students, and it is anticipated the disruptions will continue to affect students in the 2022-23 and 2023-24 school years. Some students missed or were unsuccessful in courses needed for graduation because of circumstances that were out of the students' control. Graduation pathway options have been more limited in availability due to the pandemic.

Statutory Authority for Adoption: RCW 28A.230.320, 28A.230.090, 28A.150.220(7), 28A.195.040.

Statute Being Implemented: RCW 28A.230.320.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: SBE, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Randy Spaulding, 600 Washington Street S.E., Olympia, WA 98504, 360-725-6024.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; and rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

March 10, 2022
Randy Spaulding
Executive Director

OTS-3690.1

AMENDATORY SECTION (Amending WSR 21-16-059, filed 7/28/21, effective 8/28/21)

WAC 180-111-050 Emergency waiver of certain graduation requirements in response to novel coronavirus. This section is for the novel coronavirus emergency, in response to the gubernatorial declaration of emergency on February 29, 2020. It applies to the classes of 2020 through ((2022)) 2024 beginning in the 2020-21 school year. ((The state board of education will consider what, if any, flexibility should be provided to subsequent classes of students no later than its May 2022 board meeting.)) Beginning from the date of approval of a school district's emergency waiver application, in accordance with WAC 180-111-040:

(1) Waived credit graduation requirements are limited to the student's classes impacted by the novel coronavirus disruption. The school district shall prioritize student completion of core coursework and coursework related to the student's high school and beyond plan under RCW 28A.230.090. School districts may waive credits for eligible students in the classes of 2020 to ((2022)) 2024. In addition to existing waiver authorities as described in WAC 180-111-040 (2)(a):

(a) For the classes of 2020 to 2023, school districts may waive up to two additional credits under this emergency waiver, provided that students graduate with no fewer than a total of ((twenty)) 20 credits. ((The terms "core" and "flexible" credits used in this subsection are defined in WAC 180-51-210.))

(b) For the class of 2024, school districts may waive up to one additional credit under this emergency waiver, provided that students graduate with no fewer than a total of 21 credits.

(2) For the class of 2020, 2021, ((and)) 2022, and 2023: The emergency waiver may be applied to core credits or flexible credits, provided that no more than one credit in each core subject area is waived. The terms "core" and "flexible credits" used in this section are defined in WAC 180-51-210.

(3) For the class of 2024: The emergency waiver may be applied to core or flexible credits.

(4) A student's graduation pathway requirement may be waived for eligible students in the classes of 2020 to ((2022)) 2023 after a school district has made a good faith effort to help the student meet their pathway requirement, as defined in WAC 180-111-020.

((4)) (5) The graduation pathway requirement may also be waived for a student so that the student may earn a diploma before their planned graduation year, provided that:

(a) The student may not be granted an emergency waiver of credit requirements; and

(b) The student must meet all other state graduation requirements including credit requirements under WAC 180-51-210.

((5)) (6) This emergency waiver may apply to individual students participating in the international baccalaureate diploma programme as defined in RCW 28A.230.122 to enable these students to earn a Washington high school diploma.

((6)) (7) Schools operating under the waiver defined in WAC 180-18-055 may waive graduation requirements in a manner consistent with this section.

[Statutory Authority: RCW 28A.195.010, 28A.230.090, 28A.150.220(7). WSR 21-16-059, § 180-111-050, filed 7/28/21, effective 8/28/21. Statutory Authority: 2020 c 7 § 10-12 and RCW 28A.195.010, 28A.230.090, 28A.150.220(7). WSR 21-01-077, § 180-111-050, filed 12/10/20, effective 1/10/21.]